Supreme Court, U.S.
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No. 06-823

IN THE
Supreme Court of the United States

MOSHE TAL; BRICKTOWN 2000, INC.;and TAL TECHNOLOGIES, INC.,

Petitioners,

v.

DAN RANDOLPH HOGAN; TMK/HOGAN JOINT VENTURE, a.k.a. COMMERCIAL REAL ESTATE SERVICES JOINT VENTURE; HOGAN PROPERTY MANAGEMENT, L.L.C.; BRICKTOWN-TMK/ HOGAN PARKING, L.L.C.; BRICKTOWN-TMK/HOGAN ENTERTAINMENT, L.L.C.; MARK D. ELGIN; STONEGATE MANAGEMENT COMPANY, L.L.C.; ELGIN DEVELOPMENT COMPANY, L.L.C.; TDC COMPANY, L.L.C.; and, TIANA P. DOUGLAS

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE TENTH CIRCUIT COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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Dated: December 11, 2006.

QUESTIONS PRESENTED

1) Whether, for purposes of a motion to dismiss under Fed.R.Civ.P. 12(b)(6), the Tenth Circuit erred when it applied the heightened pleading standards of Fed.R.Civ.P. 9, rather than the notice pleading standards of Fed.R.Civ.P. 8, to evaluate the sufficiency of all elements of Tal Tech's and BT 2000's *Racketeering Influenced Corrupt Organizations Act* ("RICO") claims, including the allegations of bribery necessary to establish the required elements of control and participation under 18 U.S.C. § 1262(b)©, as set forth in their Complaint?

2) Whether, for purposes of a motion to dismiss under Fed.R.Civ.P. 12(b)(6), the Tenth Circuit erred when it applied the heightened pleading standards of Fed.R.Civ.P. 9, rather than the notice pleading standards of Fed.R.Civ.P. 8, to evaluate the sufficiency of Tal Tech's and BT 2000's allegations of bribery in regard to their antitrust claim(s) under the Clayton Act, as set forth in their Complaint

3) Whether the Tenth Circuit erred when held that the *Rooker-Feldman* doctrine barred Tal Tech and BT 2000 from asserting fraudulent condemnation claims: I) because they were in privity with parties to prior litigation related to the condemnation issued; and ii) because there is parallel state court proceedings involving the condemnation?

4) Whether the Tenth Circuit erred when it held that *res judicata* barred Moshe Tal's personal claims based on his position as a *qui tam* relator in prior litigation?

5) Whether the Tenth Circuit erred when it held that *res judicata* barred Moshe Tal's claims even though there has been a significant change in facts and law that alters the underlying predicates for Moshe Tal's claims.

PARTIES TO THE PROCEEDING

The following individuals and entities are parties to the proceedings in the courts below:

Petitioners: (1) **Moshe Tal**, an Oklahoma resident ("Tal"); (2) **Bricktown 2000, Inc.**, an Oklahoma Corporation ("BT-2000"); and, (3) **Tal Technologies Inc.**, an Oklahoma Corporation ("Tal-Tech") (collectively referred to as the "Tals" or "Tal's Group").

Respondents: (1) **Dan Randolph Hogan**, an Oklahoma resident ("Hogan"); (2) **TMK/Hogan Joint Venture**, a.k.a. **Commercial Real estate Services Joint Venture**, an Oklahoma Joint-Venture ("TMK/Hogan"); (3) **Hogan Property Management, L.L.C.**, an Oklahoma Limited Liability Company; ("Hogan Property"); (4) **Bricktown-TMK/Hogan Parking, L.L.C.**, an Oklahoma Limited Liability Company (Hogan Parking");(5) Bricktown-TMK/Hogan Entertainment, L.L.C., an Oklahoma Limited Liability Company ("Hogan Entertainment"); (6) **Mark D. Elgin**, a n Alabama resident ("Elgin"); (7) **Stonegate Management Company, L.L.C.**, an Alabama Limited Liability Company, and has been doing business in Oklahoma ("Stonegate"); (8) **Elgin Development Company, L.L.C.** an Alabama Limited Liability Company, and has been doing business in Oklahoma ("Elgin Development"); (9) TDC Company, L.L.C., an Alabama Limited Liability Company, and has been doing business in Oklahoma ("TDC") (Respondents 1-9 collectively referred to as the "Hogans"; the "Hogans Team"; or, "Hogan's Group"); and, (10) Tiana P. Douglas, an Oklahoma resident ("Douglas").

Amicus Curie: **The City of Oklahoma City** ("City"), an Oklahoma Municipal Corporation; and, **The Oklahoma City Urban Renewal Authority** ("Urban Renewal"), an Oklahoma Public Body Corporate Entity.

Corporate Disclosure Statement

The corporate Petitioners, Tal Technologies Inc. ("Tal Tech" or "TTI"), and Bricktown 2000, Inc. ("BT-2000") is each an independent Oklahoma corporation with no parent company. However, the majority of TTI's stock is held by Tal-Solomon Family Trust ("TS Trust"), for which Petitioner Moshe Tal ("Tal") is a Trustee and manager of said TS Trust. Furthermore, Petitioner Tal is also a holder of a valid assignments from each corporations to it's claims, and a Promissory notes and Quite Claim Deed to the Corporate's (TTI's) property and assets.

TABLE OF CONTENTS

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

CORPORATE DISCLOSURE STATEMENT iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES v

FEDERAL CASES v
STATE CASES v
FEDERAL STATUTES v
STATE STATUTES v

OPINION AND ORDERS BELOW 1

JURISDICTION 1

RULES/ STATUTES/CONSTITUTION INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING CERTIORARI 11

SUMMARY 11

DISCUSSION 13

The Tenth Circuit Erroneously Applied the Heightened Pleading Standard of Federal Rule of Civil Procedure 9 to All Elements of RICO Contained in the Tals' Complaint and Thereby Erroneously Affirmed the Judgment Dismissing the Tals' RICO Claims. 13

Pleading Under Fed.R.Civ.P. 8 14

Dismissal for Failure To State a Cause of Action Under Fed.R.Civ.P. 12(b)(6). 15

Rule 8(a) Governs the Pleading of Causes of Action under RICO 16

This Court Has Held that Heightened Pleading Rules Under Fed.R.Civ.P. 9 Cannot Be Applied to Civil Cases Other than Those Alleging Fraud or Mistake. 17

Dismissal of the RICO Claims Based on the Heightened Standard of Pleading Under Rule 9 Is In Direct Conflict With the Federal Rules of Civil Procedure, the Decisions of this Court and the Decisions of Other Federal Court. 18

Heightened Standard of Pleading Also Violates Rules for Pleading Antitrust Violations and Immunity 19

MISAPPLICATION OF THE *ROOKER-FELDMAN* DOCTRINE. 20

Rooker-Feldman Doctrine Does Not Bar Actions Based on Privity Nor Parallel Actions in State and Federal Court 20

Rooker-Feldman Was Misapplied to Bar Tal Tech and BT 2000 From Bringing Claims Based on the Fraudulent Condemnation. 21

Error in Finding Bar Based on Privity. 21

Error in Finding Preclusion Where the State Action is Still Pending. 24

Certiorari Review is Required to Correct the Tenth Circuit's Continued Misapplication of the *Rooker-Feldman* Doctrine. 25

MISAPPLICATION OF *RES JUDICATA* 25

The Issue of Whether a *Qui Tam* Relator's Personal Causes of Action Are Barred by a Prior *Qui Tam* is A Question That has Not Previously Been Decided By This Court. 25

A *Qui Tam* Relator Brings the Action on the Part of the Government and Cannot Assert Personal claims in the suit, therefore *Res Judicata* does not apply to the Relator's personal claims. 26

Because Moshe Tal Was a Relator, He Could Not Assert His Personal Claims in the *Qui Tam* and the Judgment in the *Qui Tams* Is Not *Res Judicata* as to His Personal Claims. .. 27

The Holding That Moshe Tal's Claims Are Barred Despite the Occurrence of New Facts and Law, Applies *Res Judicata* in a Manner Which Directly Conflicts with the Decisions of this Court and the Tenth Circuit's Own Precedent 27

Res Judicata and Collateral Estoppel Do Not Bar Relitigation Where There Has Been a Significant Change in Facts And/or Law since the Judgment in the Initial Action 28

The Significant Change in Facts and Law Since the *Qui Tam* Judgment Mandates That *Res Judicata* Does Not Bar Moshe Tal's Claims for Fraudulent Condemnation. 29

TABLE OF AUTHORITIES

FEDERAL CASES

Bell Atl. Corp. v. Twombly, 126 S. Ct. 2965, 165 L. Ed. 2d 949 (U.S., June 26, 2006) 20

Brannon v. Boatmen's Bancshares, Inc., 952 F.Supp. 1478 (W.D. OK 1997) aff'd, Brannon v. Boatmen's First National Bank of Oklahoma, 153 F.3d 1144 (10th Cir. 1998) 14

Cayman Exploration Corp. v. United Gas Pipeline, 873 F.2d 1357 (10th Cir. 1989) 14

Conley v. Gibson, 355 U.S. 41, 47 (1957) 14-16

Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005) 10, 12, 20, 21, 24

Farlow v. Peat, Marwick, Mitchell & Co., 956 F.2d 982, 989 (10th Cir. 1992) 14

Freedman v. Rite Aid Corp., 152 F. Supp. 2d 766 (E.D.PA, 2001) 26

Haroco, Inc. v. American National Bank & Trust of Chicago, 747 F.2d 384, 404-05 (7th Cir. 1984), aff'd on other grounds, 473 U.S. 606, 87 L. Ed. 2d 437, 105 S. Ct. 3291 (1985) 16

Hecht v. Commerce Clearing House, Inc., 897 F.2d 21, 26 (2nd Cir. 1990) 17

Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002) 15

Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) 16

Kelo v. City of New London, 125 S.Ct. 2655, 2665-66 (2005) 25

Kenman Eng'g v. City of Union, 314 F.3d 468 ..... 22, 24

Lance v. Dennis, 126 S.Ct. 1198 (2006) 10, 12, 20, 21, 23

Lawlor v. ' Screen Serv. Crop., 349 U.S. 322, 327-28 (1955) 28

Leatherman v. Tarrant County, 507 U.S. 163 (1993) 11, 14, 15, 17, 20

Looper Maintenance Service, Inc. v. City of Indianapolis, 197 F.3d 908, 911 (7th Cir. 1999) 15

Milam v. University of Texas, 961 F .2d 46, 50 (4th Cir. 1992) . 26

Minotti v. Lensink, 895 F.2d 100, 104 (2d Cir. 1990) 26

Mo's Express v. Sopkin, 441 F.3d 1229, 1234 (10th Cir. 2006) 20, 21

Northrop v. Hoffman of Simsbury, Inc., 134 F.3d 41, 46 (2d Cir. 1997) 15

Community Hospital v. Sullivan, 986 F.2d 357, 360 (10th Cir. 1993) 28, 29

Otto v. Variable Annuity Life Insurance, 814 F.2d 1127, 1136 (7th Cir. 1986) 16

Panaras v. Liquid Carbonic Industries Corp., 74 F.3d 786, 792 (7th Cir. 1996) 16

Pelfresne v. Stephens et al., 35 F.Supp2d 1964 (E.D. Ill. 1999) 17

Published Opinion, United States Court of Appeals for the Tenth Circuit's Tal et al., v. Hogan, et al., 453 F.3d 1244 (10th Cir. 2006) 9

Richmond, v. Nationwide Cassel L.P., 52 F.3d 640 (7th Cir. 1995) 17

Satsky v. Paramount Communications, Inc., 7 F.3d 1464, 1469 (10th Cir. 1993) 27

Spradling v. City of Tulsa, 198 F.3d 1219 (10th Cir. 2000)

. 28

Swierkiewicz v. Sorema, N.A., 534 U.S. 506 (2002) 11, 14, 17, 18, 20

Twombly v. Bell Atlantic Corporation, 425 F.3d 99, 104 (2nd Cir. 2005) 20

United States v. Gaubert, 499 U.S. 315, 327 (1991) 16

United States v. Neapolitan, 791 F.2d 489, 499-500 (7th Cir. 1986) 16

Westways World Travel v. AMR Corp., 182 F.Supp.2d 952, 955(C.D 17

Williams v. Mohawk Indus., 314 F.Supp.2d 133, 1344 (D.Ga. 2004) 17

STATE CASES

Board of Commissioners of Muskogee County v. Lowery, 2006 OK 31, 136 P.3d 639 . . . . . 6, 25, 29

City of Okla. City v. Okla. City Urban Renewal Auth., 1999 OK 71, 988 P.2d 901 . . . . . 21, 24

City of Oklahoma City, et al., 110 P.3d 550 (Okla. 2005) 22

House of Realty, Inc., v. City of Midwest City,2004 OK 97, 109 P.3d 314 . . . . . 6, 25, 29

Midwest City v. House of Realty, Inc., et al., 2004 OK 56, 100 P.3d 678 . . . . . 6, 25, 29

Tal IV, 2002 OK 97 ¶ 9,61 P.2d at 241 24

Tal IV, 2003 OK 97 ¶ 8, 61 P.3d at 241 . . . . . 23, 24

Tal IV, 2007 ¶ 6, 61 P.3d 234, 240 23

FEDERAL STATUTES

15 U.S.C. §15 2

15 U.S.C. §15(a) 1

18 U.S.C. § 1962(a)(b) 17

18 U.S.C. § 1962(b) 4

18 U.S.C. § 201 8

18 U.S.C. §1343 ..... 1, 2

18 U.S.C. §1961 ..... 1, 2

18 U.S.C. §1964(c) 1

18 U.S.C. §201 ..... 1, 2, 5

28 U.S.C. § 1651 1

28 U.S.C. §1331 1

Fed.R.Civ.P. 12(b)(6) 2, 8, 10, 16

Fed.R.Civ.P. 8 ..... 2, 10-12, 14, 17

Fed.R.Civ.P. 8(a) 14

Fed.R.Civ.P. 8(a)(2) 17

Fed.R.Civ.P. 9 ..... 8, 11, 14, 15, 17, 18

Fed.R.Civ.P. 9(b) 7, 14, 16

Fed.R.Civ.P. Rule 8 10

RICO Act, 18 U.S.C. § 1961 3

Sherman Act (15 U.S.C. § 1 3

STATE STATUTES

21 Okl. Stat. §381 ..... 1, 2

21 Okla. Stat. § 38 8

Okla. Const. Article 10, §§ 23-24 2

OPINION AND ORDERS BELOW

1. Published Opinion, United States Court of Appeals for the Tenth Circuit's *Tal et al., v. Hogan, et al.*, 453 F.3d 1244 (10th Cir. 2006) - Dated 6/29/06 [Appendix 1-45];

2. Order - Tenth Circuit Court of Appeals, *Tal et al., v. Hogan, et al.*, Appeal No. 03-6293 - Denying Appellants' Petition For Rehearing - Dated 9/11/06 [Appendix, 46];

3. Order - U.S. District Court for the Western District of Oklahoma, *Tal, et al., v. Hogan, et al.*, CIV-02-324F, dismissing all of the Petitioners' claims - filed 9/30/03 [appendix 47-75]

4. Judgment - U.S. District Court for the Western District of Oklahoma, *Tal, et al., v. Hogan, et al.*, CIV-02-324F, dismissing all of Tals' claims - filed 9/30/03 [Appendix 76-77];

5. Order- U.S. District Court for the Western District of Oklahoma, *Tal, et al., v. Hogan, et al.*, CIV-02-324F, dismissing all of Moshe Tal's personal claims, and other rulings - filed 10/31/02 [Appendix 78-80].

JURISDICTION

The Decision of the Tenth Circuit was entered on June 26, 2006. Published Opinion, 453 F.3d 1244 (10th Cir. 2006) [Appendix,. 1-45]. On July 17, 2006, the Tals filed with the Tenth Circuit a Petition for Rehearing [Appendix, 201-247], and on September 11, 2006, the Tenth Circuit denied the Tals' Petition for Rehearing [Appendix, 46]. The judgment below is therefore final for purposes of this Court's jurisdiction. Jurisdiction is proper under 28 U.S.C. § 1651; and the additional jurisdictions of the District Court (the court of first instance) to wit: 18 U.S.C. §1964(c) ; 15 U.S.C. §15(a) and 28 U.S.C. §1331. Defendants' predicate acts, for purposes of 18 U.S.C. §1961, arose under 18 U.S.C.§1341; 18 U.S.C. §1343; 18 U.S.C. §201; and, 21 Okl. Stat. §381.

RULES/ STATUTES/CONSTITUTION INVOLVED

Fed.R.Civ.P. 12(b)(6);

Fed.R.Civ.P. 8;

Fed.R.Civ.P. 8;

18 U.S.C. §1961, *et seq.*;

15 U.S.C. §15, *et seq.*;

18 U.S.C.§1341;

18 U.S.C. §1343;

18 U.S.C. §201;

21 Okl. Stat. §381;

Okla. Const. Article 10, §§ 23-24.

STATEMENT OF THE CASE

Petitioners, the Tals, initiated this action to recover damages suffered as a result of the Hogan Group's and Douglas' participation in a fraudulent scheme to deprive the Tals of their business-development rights in access of $200,000,000. Douglas was a local public official holding the position of Executive Director of the Oklahoma City Urban Renewal Authority. Douglas abused her political/official position/power in order to manipulate and corrupt Oklahoma City Council members and the Urban Renewal. The Hogans were developers who conspired with Douglas and others, to use illegal means to obtain contracts with the City and Urban Renewal. The City and Urban Renewal were named as the "Enterprise" for purposes of Tals' RICO claims.

The Tals' alleged that the Hogan Group and Douglas, in concert with unnamed coconspirators, conspired together to carry out a fraudulent scheme, including bribing City and Urban Renewal officials, and City's Mayor and Councilperson, to gain votes, and making material false misrepresentations, to (I) rig the Oklahoma City public bidding process so as to illegally obtain valuable development rights in a Metropolitan Area Projects ("MAPS") and in so doing, further to (ii) prevent Petitioners, despite the manifestly superior qualifications of theirs and their joint venture partner, The Cordish Company, from being chosen as the City's developer for said project; and to (iii) acquire legal title to Tal Tech's development properties by unlawful means.

Based on this conduct, the Tals asserted six causes of actions: four (4) causes of action under the RICO Act, 18 U.S.C. § 1961, *et seq.*, including RICO Conspiracy arising out of the Hogan Groups' and Douglas' obtaining a condemnation judgment of Tal Tech's Downtown/Bricktown property by fraud; one (1) cause of action under the Sherman Act (15 U.S.C. § 1, *et seq.*); and one (1) cause of action under state law's Tortious Interference with Business.

As a basis for their RICO and antitrust claims the Tals alleged that the Hogan Group and Douglas employed numerous fraudulent means, including mail and wire fraud, to further their scheme to conspire with both public officials and private accomplices, to condemn valuable

properties belonging to Tal Tech TTI (1.4 prime acres along the Downtown/Bricktown MAPS Canal), and thereafter transfer said properties and other publicly acquired properties to the Hogan Group for their private use/control and profits. They also employed bribery of public officials as a means of control and participation with the enterprises, as well as a means of illegally, in violation of the antitrust laws, gaining an advantage over the competition, the Tals.

As predicate acts for RICO, the numerous allegations of mail fraud consisted, in part, of a letter from Hogan to the Urban Renewal which fraudulently representing that Defendant TMK/Hogan was backed by the $11 Billion Torchmark Corporation ("Torchmark Misrepresentation"). Another allegation of mail fraud involved a letter from Mr. Tolbert to the City and Urban Renewal which supported the Hogans' earlier fraudulent representation that the Bricktown Association was a partner with TMK/Hogan. The Tenth Circuit found that both of these allegations of mail fraud were sufficient to serve as predicate acts for RICO. Opinion, at 1265-1266. There were also multiple allegations of wire fraud in the Complaint. These included three electronic transmissions which the Tenth Circuit found to be sufficiently pled to satisfy the predicate act requirements of RICO. Opinion, at 1266.

The Tals also specifically alleged that Respondent Douglas submitted to the City Council and MAPS Oversight Board a resolution in support of Urban Renewal's proposed agreement with the Hogans, whereby under said agreement the City would: (I) transferred to the Hogan Group ownership of the entire 51 acres, for which the City had paid approximately $4 Million to $5 Million, plus approximately $1 Million in Federal Community Development Block Grant ("CDBG") funds, in exchange for the Hogans' promise to make less than $4 Million in improvements; and, (ii) further provided the Hogans $4 million of Section 108 (forgivable loans) in Federal CDBG funds. *Second Amended Complaint*, ¶84 [Appendix, pp.102-183]; and, RICO Statement, ¶¶ 7 and 9 (Urban Renewal funded with Federal funds and managing Federal projects, including revitalization of the bombed Oklahoma City's Murrah Federal Building area) [Appendix, pp.184-200].

To support their allegations of control over the enterprise and participation in the operation of the enterprise under 18 U.S.C. § 1962(b) and § 1962©, the Tals specifically alleged that the Hogan Group and Douglas used bribery as their main form of control and as a means of participation in the enterprises. Specifically, the Tals' pled specific facts showing bribery including: Hogans' bribing Councilman Guy Liebmann ("Liebmann") for his swing vote (5/4) and obtaining the City Council's approval (for granting the Hogan Team's the redevelopment contracts) by unlawful means (including appointing Liebmann to certain additional positions) [Second Amended Complaint {"Complaint"}, ¶¶ 157-158, and ¶ 179 (ii) and (iii)], Complaint, [Appendix, pp.102-183; and RICO Case Statement, ¶ 6, Appendix, pp. 184-200]; Hogans bribing Urban Renewal Commissioner Fred Hall ("Hall") by making Hall and his entities 50% partners in the Hogans' East Wharf Development [Complaint, ¶¶ 38 and 179(I), Appendix, pp. 102-183], and making Hall and his entities 1/3 partner in Hogan's Parking Redevelopment project [Complaint, ¶¶ 71 and 179(v), Appendix, pp. 102-183]; Hogans bribing Bricktown Association President, Jim Tolbert ("Tolbert") by making Tolbert and his entities 1/3 partner in Hogan's Parking Redevelopment project [Complaint, ¶ 179(vi), Appendix, pp. 102-183], and subsequently, appointing Tolbert as Urban Renewal Commissioner; Hogans bribing Urban Renewal Commissioner J. Larry Nichols ("Nichols") by managing Nichols' Mid America Tower Building below market price, and making substantial public improvements surrounding Nichols' Building [Complaint, ¶ 179(ix) and (x), Appendix, pp. 102-183]; and the Hogans' bribing City's Mayor, Kirk Humphreys ("Humphreys"), by making substantial public improvement surrounding Humphreys' Power Alley Parking Building and also closing street/alley and transferring deed to said street/alley to Humphreys' Power Alley Parking company (at no cost)[Complaint, ¶ 179(viii), Appendix, pp. 102-183]; Hogans bribing Urban Renewal, its Commissioners and Management, by leasing to Urban Renewal office space below market rate/value [Complaint, ¶ 179(viii), Appendix, pp. 102-183]. Tal Tech and BT 2000 claimed said briberies are in violation of State Laws [21 O.S. § 381, *et seq.*] as well as Federal Bribery law [18 U.S.C. §201]. *Plaintiff's* 3/12/03 *Combined Response To All Defendants' Motions To Dismiss, and Brief in Support* [Appendix, pp. 315-352].

On October 30, 2002, the District Court, dismissed, without leave to amend, all of Tal's personal claims on a number of grounds, but primarily, finding that Tal was barred by *res judicata* and lacked standing to sue because he was the leader of a taxpayers group called *Taxpayers Against Ripoffs* ("TAR") who previously filed taxpayers *Qui Tam* suits against the Respondents/Defendants (i.e., *res judicata*, etc.). [10/30/02 Hearing Transcript, Appendix, pp.81-101, at 96, *also see*, 10/31/02 Order, Appendix, pp. 78-80]. At the hearing where he dismissed the claims Judge Friot stated that issue and claim preclusion barred Moshe Tal's claims because he could and should have asserted his personal claims in the *qui tam* litigation. While Judge Friot concluded that claim preclusion and issue preclusion were fatal to all of the claims asserted in this case by Moshe Tal, he was "not able to conclude that with respect to the claims asserted by Bricktown 2000 and Tal Technologies, Inc." 10/30/02 Hearing Transcript, Appendix, at pp. 97-98

On appeal, Tal protested the dismissal based on *res judicata* because there had been a significant change in relevant and controlling facts and law. *See* 7/13/06 Petition for Rehearing, Appendix, pp. 245-247; Appellant Tal's Opening Brief [not included in Appendix].[1] He also claimed that res judicata could not be applied to him in regards to prior *qui tam* suits, because as the *qui tam* relator he was not a party and could not assert his own claims in the litigation. *See* 7/13/06 Petition for Rehearing, Appendix, pp. 245-247; Appellant Tal's Opening Brief [not included in Appendix].

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[1]The facts changed significantly when the Urban Renewal transferred the property to a private person for private development. This supported Tal's allegation that the property had been condemned for private use and not public use as alleged by the City and Urban Renewal. Tal had also claimed that taking of private property for private use was barred by the Oklahoma Constitution. Since the condemnation, the Oklahoma Supreme *The Board of Commissioners of Muskogee County v. Lowery*, 2006 OK 31, 136 P.3d 639, that the Oklahoma Constitution prohibits the condemnation of private property for private use. The Oklahoma Supreme Court also held in *Midwest City v. House of Realty, Inc., et al.*, 2004 OK 56, 100 P.3d 678 and related case - *House of Realty, Inc., v. City of Midwest City*,2004 OK 97, 109 P.3d 314, that a government entity may not condemn private property for one purpose and then transfer it to another governmental entity for another purpose.

After filing a lengthy and detailed *Second Amended Complaint* [Appendix, pp. 102-183] and a *RICO Statement* [Appendix, pp. 184-200], on September 30, 2003, the District Court issued an Order [Appendix, pp. 47-75], and Judgment [Appendix, pp. 81-82] dismissing the entire case with prejudice on several grounds - except the Tal Tech's and BT 2000's State claims for Tortious Interference With Business (dismissed without prejudice). The District Court also decided to treat the claims for RICO Conspiracy to Obtain Condemnation By Fraud as a "State Claim" and dismissed said claim without prejudice.[2]

On June 26, 2006, the Tenth Circuit Court of Appeals issued it's Opinion affirming the District Court's dismissal of the Tals' Complaint. Published Opinion, 453 F.3d 1244 (10th Cir. 2006) [Appendix, pp. 1-45]. On July 13, 2006, the Tals filed with the Tenth Circuit a Petition for Rehearing [Appendix, pp. 201-247], and on September 11, 2006, the Tenth Circuit denied the Tals' Petition for Rehearing [Appendix, p. 46].

The Tenth Circuit found that Tal Tech's and BT2000's Complaint adequately pled its allegations of wire fraud and mail fraud pursuant to the stringent pleading requirements for fraud found in Fed.R.Civ.P. 9(b). The Tenth Circuit also found that Tal Tech and BT 2000 sufficiently alleged a pattern of racketeering activity.

Despite the finding that Tal Tech and BT 2000 had adequately plead the elements of mail and wire fraud, the Tenth Circuit affirmed the District Court's dismissal of the RICO claims under Fed.R.Civ.P.

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[2] Note: While the Appeal was pending before the Tenth Circuit, within one (1) year from the time the state claims were dismissed without prejudice, and pursuant to the Oklahoma Saving Clause (12 O.S. 100, *et seq.*), specifically on September 27, 2004, the Tals re-filed the Tortious Interference and the Conspiracy to Obtain Condemnation Judgment by Fraud claims with the Oklahoma County State Court (*Tal, et al., v. Hogan, et al.*, CJ-04-7943). The case is still pending, however, the Hogan Group, the City and Urban Renewal moved to dismiss, among other things, claiming *Res Judicata*, statute of limitations, etc. Initially the trial judge granted said motions, however, on November 27, 2006, the Oklahoma Supreme Court granted Tal's Writ of Mandamus/Prohibition (for disqualification of the trail judge- the Honorable Vicki Robertson), and Ordered her to vacate all adverse rulings (including the dismissal orders/judgments).

12(b)(6). Using the heightened pleading standards of Fed.R.Civ.P. 9, the court held that because Tal Tech and BT2000 had failed to cite the relevant bribery statute and failed to sufficiently plead the facts necessary to support their allegation of bribery, they were unable to support the RICO requirements under 1962(b) and ©.[3]

The Tenth Circuit held that if Tal Tech and BT 2000 had adequately pled bribery, it would have been sufficient to support the required elements of control and participation as required by 1962(b) and ©. The Court also held that because Tal Tech and BT 2000 failed to satisfy the requirements of 1962(b) and 1962© by failing to adequately plead bribery, they perforce failed to satisfy the

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[3] The 10th Circuit found that Tal had plead bribery under the Federal Bribery statute at 18 U.S.C. § 201, but had failed to show that their claims came within the ambit of § 201 because they had not shown the existence of federal ties between Douglas, Urban Renewal Commissioners or the City Council. Based on this erroneous finding, the court found that any claim of bribery could not stand. This finding is contrary to the Record. At ¶ 137 of the Second Amended Complaint, the Tals specifically alleged: "On May 26, 1998 Defendant Douglas submitted to the City Council and MAPS Oversight Board a resolution in support of Urban Renewal's proposed agreement with Defendant TMK/Hogan. Under the said agreement the City (I) transferred to Defendant TMK/Hogan ownership of the entire 51 acres, for which the City had paid approximately $4 million to $5 million, **plus approximately $1 million in Federal community development block grant funds**, in exchange for Defendant's promise to make less than $4 million in improvements; (ii) and **further provided Defendant $4 million of loans in community development block grants**. (Emphasis added). In the RICO Case Statement, ¶ 7, the Tals stated that the Urban Renewal (Enterprise) was managing renovation and construction of the new (bombed) Federal Murrah Building, and likewise, in ¶ 9 of the RICO Statement, the Tals stated ... "**Urban Renewal. has received approximately $1.5 million in Community Development Block Grants, a federal program** ...". Clearly the finding that the federal bribery statute did not apply because there were no federal ties, was erroneous. Then in regard to the Oklahoma state bribery statute, the court found that the Tals had not cited the statute in the Complaint and therefore, had not sufficiently alleged bribery under Oklahoma law. While the statute, 21 Okla. Stat. § 38, was cited in the original Complaint, it is true that the citation was omitted in the amended Complaint. However, since there is no pleading requirement that a complaint cite to a statute, the failure to include the citation to the Oklahoma bribery statute is not grounds for dismissal under 12(b)(6).

requirements of 1962(d).[4]

The Tenth Circuit also dismissed the antitrust claims, in part, because they found the allegations of bribery to be inadequate. They found that because there was no finding of illegal conduct, including bribery, by Douglas or the Hogans, they were immune from prosecution based on the *Parker* and *Noerr-Pennington* doctrines. The court also dismissed the antitrust claims finding that lacking sufficient allegations of bribery, there was no evidence of illegal conduct.[5]

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[4] It is difficult to understand how the Tenth Circuit could have found that the facts pled to support the bribery claims were insufficient based upon the court's express acknowledgment of allegations, which, if true, are a violation of Oklahoma bribery and conflict of interest statutes. The court noted the acts stating: "[included in these acts are: (1) the renting of office space to the Renewal Authority at below-market rates; (2) bribing Renewal Authority Commissioner Hall by making him a 50% partner in an East Wharf development project; (3) bribing Renewal Authority Commissioner Nichols by offering the Mid-American Tower at below-market rates; (4) securing Commissioner Talbot a position on the Myriad Garden Trust and the Renewal Authority; (5) bribing Councilman Liebmann by contributing to a political fundraiser which led to his appointment to political positions with various City trusts; and (6) bribing Mayor Humphreys. Opinion, 453 F.3d at 1267. Even though this conduct clearly establishes bribery, the court found this conduct to be nothing more than lobbying. Whether such prohibited conduct amounts to bribery or just lobbying is a question of fact which cannot be determined in a 12(b)(6) motion to dismiss.

[5] The Tenth Circuit's claim there was no bid-rigging because the alleged conduct did not fit the traditional definition of "bid-rigging" makes an immaterial distinction. Regardless of vernacular used to describe the conduct, the fact remains that there are sufficient specific allegations to adequately plead violations of Oklahoma fair bidding law, the bribery statutes which would lead the result that the bids were unlawful or "rigged." The Complaint set forth specific facts which showed, that in contravention of Oklahoma law, that despite the appearance of a fair and legal bidding process, the Request for Proposals was a sham because the Hogans had been pre-selected to get the contracts before the bid-submission's deadline. See ¶ 190 of the Second Amended Complaint. Moreover, since it is undisputed that at least 2 out of the 5 Urban Renewal commissioners had personal and financial interests in the outcome of the bid's award and, as alleged, conspired with the Hogan in developing the scheme to award the contracts to the Hogans - **before** the deadline – regardless of the bids of other developers – these facts, if true, are sufficient to raise questions of fact for purposes of unfair trade and monopoly claims. So whether it is called bid-rigging or something else, it is clearly illegal and such claims should not have been dismissed under Fed.R.Civ.P. 12(b)(6).

The finding that Tal Tech and BT 2000 failed to adequately plead bribery, as far as it applies to demonstrating how the Hogans and Douglas controlled or participated in the RICO enterprises, or for purposes of antitrust, is contrary to the notice pleading requirements in Fed.R.Civ.P. Rule 8. There is no requirement under Rule 8 that the Complaint contain a citation to the statute upon which the allegations rely. Moreover, taking the facts enumerated above and in the Complaint as true, Tal Tech and BT 2000 gave Douglas and the Hogans sufficient notice of the bribery claims against them and to establish the wrongful acts of bribery of city officials which led to control over the Enterprise and collusion for purposes of antitrust. Thus, for purposes of Fed.R.Civ.P. 8 and 12(b)(6), Tal Tech's and BT 2000's claims under § 1962(b), § 1962© and § 1962(d) and antitrust were sufficiently plead and should not have been dismissed for failure to state a claim.

The Tenth Circuit also dismissed Tal Tech's and BT 2000's claims related to fraudulent condemnation, holding that they were barred by the *Rooker-Feldman* Doctrine. The court held that under *Rooker-Feldman*, based on privity and a parallel state court proceeding, Tal Tech and BT 2000 are barred from asserting claims related to the fraudulent condemnation. This holding is in direct conflict with this Court's recent decisions in *Lance v. Dennis*, 126 S.Ct. 1198 (2006) and *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005). In these cases, this Court held that *Rooker-Feldman* had a very narrow application and did not bar federal suits based on concepts of privity or the existence of a parallel state court proceeding. It also conflicts with the Tenth Circuit's own decision in *Mo's Express v. Sopkin*, 441 F.3d 1229, 1234 (10th Cir. 2006).

REASONS FOR GRANTING CERTIORARI

SUMMARY

1) CERTIORARI SHOULD BE GRANTED BECAUSE THE TENTH CIRCUIT HAS DECIDED A MATTER IN DIRECT CONFLICT WITH THE DECISIONS OF THIS COURT AND OTHER FEDERAL COURTS. THIS ISSUE IS ALSO, IN PART, A QUESTION OF FIRST IMPRESSION INVOLVING AN IMPORTANT ISSUE OF FEDERAL LAW.

HEIGHTENED PLEADING STANDARDS FOR ALL ELEMENTS OF RICO COMPLAINTS.

In affirming the Rule 12(b)(6) dismissal of Tal Tech's and BT 2000's RICO claims, the Tenth Circuit, relying on Tenth Circuit precedent, applied the heightened pleading standard under Fed.R.Civ.P. 9 to all elements of the RICO claim. This is in direct conflict to the decisions of this Court holding that a federal court may not apply a "heightened pleading standard" one that is more stringent than the notice pleading requirements of Rule 8(a), in cases not involving fraud or mistake. *See Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506 (2002); *Leatherman v. Tarrant County*, 507 U.S. 163 (1993). The use of this heightened pleading standard is also in conflict with other federal courts where it is held that, with the exception of the predicate acts involving fraud, RICO complaints are subject to the pleading requirements of Fed.R.Civ.P. 8.

While this Court has held that heightened pleading requirements may not be applied to issues other than fraud or mistake, the decided cases did not involve RICO claims. Thus, to the extent that the issues here involve RICO, the question of heightened pleading requirements as to all elements of RICO is a question of first impression.

HEIGHTENED PLEADING STANDARDS FOR ANTITRUST COMPLAINTS.

The Tenth Circuit's heightened standard of pleading to the RICO issues, also brought about the dismissal of Tal Tech's and BT 2000's antitrust claims. Tal Tech and BT 2000 assert, for the same reasons such heightened pleading standard was improper for the RICO claims,

it was error for the court to evaluate elements of the antitrust claims under this heightened pleading standard. Aside from the conflict with this Court's rulings in *Swierkiewicz* and *Leatherman*, it conflicts with the rulings of other federal courts which hold that antitrust complaints must be evaluated under the notice pleading standards of Fed.R.Civ.P. 8.

Like the RICO issue, this issue is also, in part, a question of first impression in that this Court has not held that the heightened pleading standards of Rule 9 cannot be applied to antitrust actions.

2) CERTIORARI SHOULD BE GRANTED BECAUSE THE TENTH CIRCUIT HAS DECIDED A MATTER IN DIRECT CONFLICT WITH THE DECISIONS OF THIS COURT AND THE TENTH CIRCUIT'S OWN PRECEDENT.

The Tenth Circuit affirmed the dismissal of Tal Tech's and BT 2000's claims related to the issue of fraudulent condemnation. The court held that dismissal was proper under the *Rooker-Feldman* doctrine based on privity and parallel state litigation. This holding is in direct conflict with this Court's very recent decisions in *Lance v. Dennis,* 126 S.Ct. 1198 (2006) and *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005). It also directly conflicts with the Tenth Circuit's decision in *Mo's Express v. Sopkin,* 441 F.3d 1229, 1234 (10th Cir. 2006). Certiorari should be granted to allow review and correction of the Tenth Circuit's erroneous application of *Rooker-Feldman.*

3) CERTIORARI SHOULD BE GRANTED BECAUSE THE TENTH CIRCUIT HAS APPLIED *RES JUDICATA* IN A MANNER WHICH DIRECTLY CONFLICT WITH ITS OWN PRECEDENT AND IT INVOLVES A QUESTION OF FIRST IMPRESSION FOR THIS COURT.

The district court dismissed Moshe Tal's personal claims on the grounds of *res judicata.* The court found that Moshe Tal had been the *qui tam* relator in a prior *qui tam* action, Tal III, and that he could and should have brought his personal claims in that action and his failure to do so rendered the judgment in that case *res judicata* as to his personal claims. This holding violates the Tenth Circuit's own case law which holds that a *qui tam* relator's personal claims cannot be

asserted in a *qui tam* and therefore the judgment in the *qui tam* is not *res judicata* as to the relator's claims.

This is an issue not previously addressed by this Court and it is a important issue of federal and state concern as there are *qui tam* relators at both levels and their rights should be clarified. Moshe Tal therefore respectfully asks this Court to grant certiorari to review and rule on this issue.

4) CERTIORARI SHOULD BE GRANTED BECAUSE THE TENTH CIRCUIT HAS APPLIED *RES JUDICATA* IN A MANNER WHICH DIRECTLY CONFLICTS WITH THE DECISIONS OF THIS COURT AND THE TENTH CIRCUIT'S OWN PRECEDENT.

The Tenth Circuit's finding that *res judicata* bars Moshe Tal's claim, directly conflicts with the decisions of this Court and the Tenth Circuit's own precedent. Both courts have held that where there is a significant change of facts and/or law, *res judicata* will not bar a subsequent suit. However, despite significant change in facts and law involving the condemnation, the district court held that Moshe Tal was barred by *res judicata* from asserting his claim for fraudulent condemnation.

The Tenth Circuit's decision's conflicts with the decision of this Court and the Tenth Circuit's own case law. Moshe Tal therefore respectfully asks this Court to grant certiorari to review and rule on this issue.

DISCUSSION

THE TENTH CIRCUIT ERRONEOUSLY APPLIED THE HEIGHTENED PLEADING STANDARD OF FEDERAL RULE OF CIVIL PROCEDURE 9 TO ALL ELEMENTS OF RICO CONTAINED IN THE TALS' COMPLAINT AND THEREBY ERRONEOUSLY AFFIRMED THE JUDGMENT DISMISSING THE TALS' RICO CLAIMS.

Tal Tech and BT 2000 seek certiorari review asking this Court to decide whether a federal court is permitted to use the heightened pleading standard found in Fed.R.Civ.P. 9 to determine the sufficiency of the allegations of all elements of a RICO complaint.

The Tenth Circuit has adopted the heightened pleading requirement of Fed.R.Civ.P. 9(b) for all elements of RICO alleged in a complaint. *Cayman Exploration Corp. v. United Gas Pipeline*, 873 F.2d 1357 (10th Cir. 1989); *Farlow v. Peat, Marwick, Mitchell & Co.*, 956 F.2d 982, 989 (10th Cir. 1992); *Brannon v. Boatmen's Bancshares, Inc.*, 952 F.Supp. 1478 (W.D. OK 1997) *aff'd, Brannon v. Boatmen's First National Bank of Oklahoma*, 153 F.3d 1144 (10th Cir. 1998).

This heightened standard of review directly conflicts with the decisions of this Court holding that in all civil actions, with the exception of allegations of fraud or mistake, the standard of pleading is that provided for in Fed.R.Civ.P. 8(a). Application of a heightened pleading standard, such as that found under Fed.R.Civ.P. 9, is prohibited. This heightened standard of pleading also conflicts with the decisions of other federal courts which hold that in a RICO action, only the claims for the predicate acts of fraud must be plead pursuant to the particularity standard of Rule 9. All other elements of RICO need only be pled pursuant to the notice requirements of Rule 8.

PLEADING UNDER FED.R.CIV.P. 8

Under Fed.R.Civ.P. 8, a complaint must include only "a short and plain statement of the claim showing that the pleader is entitled to relief." *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 512 (2002) *quoting Conley v. Gibson*, 355 U.S. 41, 47 (1957). The complaint's main function is to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. at 47.

Reaffirming the liberal pleading standard of Rule 8, in *Leatherman v. Tarrant County*, 507 U.S. 163 (1993) this Court quoted *Conley* stating:

> The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.

Leatherman v. Tarrant County, 507 U.S. at 168 *quoting Conley v. Gibson*, 355 U.S. at 47.

The Federal Rules of Civil Procedure require a plaintiff to disclose adequate information regarding the basis of the claim for relief as distinguished from a bare averment that the plaintiff wants relief and is simply entitled to it. *See 5 Charles Allen Wright & Arthur R. Miller, Federal Practice and Procedure: Civil 2d* § 1202 (2d ed. 1990). A complaint contains adequate information regarding the basis of the claim for relief if it contains even "the bare minimum facts necessary to put the defendant on notice of the claim so that he can file an answer." *Higgs v. Carver*, 286 F.3d 437, 439 (7th Cir. 2002). To provide a defendant with fair notice, "a complaint must allege facts bearing on all material elements necessary to sustain a recovery under some viable legal theory." *Looper Maintenance Service, Inc. v. City of Indianapolis*, 197 F.3d 908, 911 (7th Cir. 1999) (citation omitted).

The pleading rules of Rule 8 apply to all civil actions unless specifically stated otherwise. One example is under Fed.R.Civ.P. 9, which requires that claims of fraud and mistake be pled with particularity. However, the particularity standard does not apply to civil causes of action unless such claims are listed under Fed.R.Civ.P. 9. *Leatherman v. Tarrant County,* 507 U.S. at 168.

Based upon the liberal pleading standard established by Fed. R. Civ. P. 8(a), even the failure to cite a statute, or to cite the correct statute, will not affect the merits of the claim. *Northrop v. Hoffman of Simsbury, Inc.*, 134 F.3d 41, 46 (2d Cir. 1997). In considering a motion to dismiss, it is not the legal theory but, rather, the factual allegations that matter. *Id.*

DISMISSAL FOR FAILURE TO STATE A CAUSE OF ACTION UNDER FED.R.CIV.P. 12(B)(6).

When reviewing a motion to dismiss, all factual allegations made in a complaint must be taken as true. *United States v. Gaubert*, 499 U.S. 315, 327 (1991). When evaluating a complaint for failure to state a claim, the question is not whether the facts stated in the complaint, if proven, would entitle the plaintiff to any relief. Instead, the question is whether there is any set of "facts that could be proved consistent

with the allegations of the complaint" which would entitle the plaintiff to some relief. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). To avoid a motion to dismiss, a complaint needs only to set out facts sufficient to 'outline or adumbrate' the basis of the claim. *Panaras v. Liquid Carbonic Industries Corp.*, 74 F.3d 786, 792 (7th Cir. 1996).

The Court's analysis under Rule 12(b)(6) requires it to determine whether the facts alleged in the complaint would entitle the plaintiff to a legal remedy. In appraising the sufficiency of the complaint a court must follow the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

RULE 8(A) GOVERNS THE PLEADING OF CAUSES OF ACTION UNDER RICO.

With the exception of the Tenth Circuit, the federal courts generally agree that with the exception of elements of fraud, all other allegations of RICO violations are subject to the pleading requirements of Rule 8(a). Whereas allegations of fraudulent acts must pleaded with Fed.R.Civ.P. 9(b) particularity in RICO cases, allegations as to the existence of an enterprise need only meet the notice-pleading standards of Rule 8. *See Haroco, Inc. v. American National Bank & Trust of Chicago*, 747 F.2d 384, 404-05 (7th Cir. 1984), aff'd on other grounds, 473 U.S. 606, 87 L. Ed. 2d 437, 105 S. Ct. 3291 (1985); *see also Otto v. Variable Annuity Life Insurance*, 814 F.2d 1127, 1136 (7th Cir. 1986); *United States v. Neapolitan*, 791 F.2d 489, 499-500 (7th Cir. 1986).

For purposes of 18 U.S.C. § 1962(a)(b) and © the standard of pleading is set under the liberal pleading requirements of Fed.R.Civ.P. 8(a)(2). *Westways World Travel v. AMR Corp.*, 182 F.Supp.2d 952, 955(C.D. Cal. 2001). Only when a party is pleading fraud, is the party required to state the facts with specificity. *Westways World Travel v. AMR Corp.*, 182 F.Supp.2d at 957.

Where a predicate act for purposes of RICO does not sound in fraud, a RICO claimant need only comply with the general pleading

requirements of Rule 8 (e)(1) and not the heightened pleading requirements of Rule 9(b). *Williams v. Mohawk Indus.*, 314 F.Supp.2d 133, 1344 (D.Ga. 2004); *Richmond, v. Nationwide Cassel L.P.*, 52 F.3d 640 (7th Cir. 1995); *Hecht v. Commerce Clearing House, Inc.*, 897 F.2d 21, 26 (2nd Cir. 1990).[6]

THIS COURT HAS HELD THAT HEIGHTENED PLEADING RULES UNDER FED.R.CIV.P. 9 CANNOT BE APPLIED TO CIVIL CASES OTHER THAN THOSE ALLEGING FRAUD OR MISTAKE.

In recent years it has been brought to this Court's attention that heightened rules of pleading, beyond that required by Rule 8, were being applied in various types of civil cases. *Leatherman v. Tarrant County*, 507 U.S. 163 (1993); *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506 (2002).

In *Leatherman v. Tarrant County*, this Court rejected the Fifth Circuit's application of a heightened pleading standard in cases alleging municipal liability under Section 1983. The Court made it quite clear that application of a standard of pleading other than the liberal notice pleading requirements of Fed.R.Civ.P. 8 was forbidden in civil cases unless otherwise provided by the Fed.R.Civ.P. or other statute. Thus, only in cases of fraud and mistake could a court apply the particularity requirement imposed in Fed.R.Civ.P. 9. Therefore, since a § 1983 case against a municipality is not one for fraud or mistake, the pleading requirements of Rule 8 and not those of Rule 9, must be applied in evaluating the sufficiency of the complaint.

Another instance of unauthorized heightened pleading requirements was presented to, and rejected by, this Court in *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506 (2002). In *Swierkiewicz*

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[6] Under substantially similar facts as the present case, the Eastern District of Illinois held that the plaintiffs had adequately plead a RICO violation and dismissal for failure to state a claim was improper. In *Pelfresne v. Stephens et al.*, 35 F.Supp2d 1964 (E.D. Ill. 1999) the allegations were remarkably similar to those in the present case, including alleged bribery, sham condemnation proceedings, use of condemned property for improper purposes, and award of contracts to favored developer. In *Pelfresne*, the court held that, despite alleged insufficient pleading of RICO claims, plaintiff's RICO claims could not be dismissed under Rule 12(b)(6).

this Court again held that was a violation of the Rules of Civil Procedure to apply a heightened pleading requirement to an action where such requirement is not imposed by Rule of statute. Thus, in *Swierkiewicz,* this Court held that it was error to grant a motion to dismiss a complaint alleging discrimination on the grounds that the claims were not plead with the particularity required by Rule 9. *Swierkiewicz v. Sorema, N.A.*, 534 U.S. at 514.

DISMISSAL OF THE RICO CLAIMS BASED ON THE HEIGHTENED STANDARD OF PLEADING UNDER RULE 9 IS IN DIRECT CONFLICT WITH THE FEDERAL RULES OF CIVIL PROCEDURE, THE DECISIONS OF THIS COURT AND THE DECISIONS OF OTHER FEDERAL COURT.

With the exception of allegations of fraudulent predicate acts, all elements of a RICO claim must be plead under the notice pleading standards of Rule 8. Thus, the Tenth Circuit erred when it used the heightened standard of pleading under Rule 9 to determine the sufficiency of all the elements of the Tals' RICO claim, including the allegations of bribery. Using this improper standard, the Tenth Circuit erroneously affirmed the dismissal of the Tals' RICO claims because the Tals' did not cite the relevant bribery statute in the Complaint, and because the Complaint allegedly only made conclusory allegations of bribery. Because of the alleged failure to adequately plead bribery, the Tenth Circuit dismissed the Tals' entire RICO action.

After holding that the Tals' had adequately plead the predicate acts of mail and wire fraud and a pattern of racketeering, the Tenth Circuit held that the RICO action must be dismissed because it failed to adequately plead bribery. The court held that without any claims of bribery, the Tals' could not support their claims of control or participation in the enterprise as required by § 1962(b) and § 1962©. Thus, the failure to satisfy the elements of §§ 1962(b)© required the dismissal of the Tals' entire RICO action.

The allegations of bribery contained in the complaint were more than sufficient to satisfy the notice pleading requirements of Rule 8. Tal Tech and BT 2000 cited numerous acts of bribery, and supported each allegation with the names and positions of the parties, the nature,

type, and where applicable, the value of the bribe, and the purpose and effect of the bribe. Moreover since Rule 8 does not require that a plaintiff cite the statute relied upon for relief, it was not error for the Tals' not to cite the bribery statute in their Complaint.

Certiorari should be granted in this matter to review the Tenth Circuit's use of an unjustified, heightened standard of pleading for all elements of a RICO claim. The Tenth Circuit's use of this standard is manifestly incorrect in light of the Federal Rules of Civil Procedure, the decisions of this Court and the decisions of other lower federal courts.

HEIGHTENED STANDARD OF PLEADING ALSO VIOLATES RULES FOR PLEADING ANTITRUST VIOLATIONS AND IMMUNITY

The Tenth Circuit's application of a heightened standard of pleading to hold that Tal Tech and BT 2000 failed to adequately plead bribery, also resulted in the dismissal of their antitrust claims. The dismissal was based on findings of Parker and Noerr-Pennington immunity protected the defendants and failure to adequately plead an antitrust violation.

The Tenth Circuit held that because the Tals' failed to adequately plead bribery, there was no waiver of immunity by Douglas or the Hogans, and without the bribery claim, the evidence was, in part, insufficient to prove an antitrust violation. See Opinion, 453 F.3d at 1259 (holding that Douglas was entitled to immunity because there was no evidence of illegality of her actions); Opinion, 453 F.3d at 1269, 1267 n27 (listing several of the allegations of bribery and holding them insufficient to show bribery) and Opinion, 453 F.3d at 1261 ("nor was there any evidence of bribery" for purposes of finding an antitrust violation). Thus, the use of the heightened pleading requirement for bribery to support the RICO claim has infected the pleading requirements for antitrust. There is no heightened pleading requirement for antitrust. *Twombly v. Bell Atlantic Corporation*, 425 F.3d 99, 104 (2nd Cir. 2005), U.S. Supreme Court certiorari granted by *Bell Atl. Corp. v. Twombly*, 126 S. Ct. 2965, 165 L. Ed. 2d 949 (U.S., June 26, 2006)(while Tal Tech and BT 2000 do not have access to the petition for certiorari filed by *Bell Atlantic Corp.* they believe it reasonable to assume that at least one of the issues posed for certiorari

review is whether a heightened pleading standard applies to antitrust actions. If that is true, it is further support for granting certiorari in this case to review the propriety of heightened pleading requirements for RICO actions).

Just as it was with RICO, the Tenth Circuit's application of the heightened pleading requirement to antitrust actions directly conflicts with *Swierkiewicz v. Sorema*, N.A., 534 U.S. 506 and *Leatherman v. Tarrant County*, 507 U.S. 163 as well as the decisions of other federal district courts. Because the improper heightened pleading requirement for the bribery claim has also resulted in the unjustifiable dismissal of Tal Tech's and BT 2000's antitrust claims, Tal Tech and BT 2000 respectfully ask this Court to grant certiorari and hold that the application of the heightened pleading requirements do not apply to antitrust claims.

MISAPPLICATION OF THE *ROOKER-FELDMAN* DOCTRINE.

The Tenth Circuit Court of Appeals held that the *Rooker-Feldman* Doctrine bars Tal Tech from asserting a claim for fraudulent condemnation as an independent action and Tal Tech and Petitioner BT 2000 from using the fraudulent condemnation as a predicate for their RICO claims. The Tenth Circuit's application of *Rooker-Feldman* in this case directly conflicts with this Court's decisions in *Lance v. Dennis,* 126 S.Ct. 1198 (2006) and *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005). It also violates the Tenth Circuit's own precedent in *Mo's Express v. Sopkin,* 441 F.3d 1229, 1234 (10th Cir. 2006).

ROOKER-FELDMAN DOCTRINE DOES NOT BAR ACTIONS BASED ON PRIVITY NOR PARALLEL ACTIONS IN STATE AND FEDERAL COURT.

The *Rooker-Feldman* doctrine is a narrow rule of very limited application. Under the *Rooker-Feldman* doctrine, "lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis,* 126 S.Ct. at 1201. The doctrine applies only in where a party, in effect, seeks to appeal an unfavorable state-court decision to a lower federal court. *Exxon Mobil*

Corp. v. Saudi Basic Industries Corp., 544 U.S. at 291. It only applies where the party has brought the federal case to directly attack the state court judgment. *Rooker-Feldman* is not a substitute for ordinary principles of preclusion or an extension of other grounds for federal court abstention. *Mo's Express v. Sopkin,* 441 F.3d 1229, 1234 (10th Cir. 2006)(*citing Exxon Mobil, supra*).

The *Rooker-Feldman* doctrine does not bar actions by non-parties to the earlier state-court judgment nor does it apply to persons who were not parties but could be found to be in privity with a party for purposes of preclusion law. *Lance v. Dennis,* 126 S.Ct. at 1202; *Mo's Express v. Sopkin,* 441 F.3d at 1234-35. Nor does it apply to parallel state and federal litigation. *Lance v. Dennis,* 126 S.Ct. at 1201 (*citing Exxon v. Mobil,* 544 U.S. at 292).

ROOKER-FELDMAN WAS MISAPPLIED TO BAR TAL TECH AND BT 2000 FROM BRINGING CLAIMS BASED ON THE FRAUDULENT CONDEMNATION.

Rooker-Feldman was plainly misapplied by the Tenth Circuit to preclude Tal Tech's action for condemnation obtained by fraud and to preclude Tal Tech and BT 2000 from asserting the fraudulent condemnation as a predicate act for purposes of RICO. The court first erred in using the concept of privity to bar the Tals from raising claims of fraudulent condemnation. It erred again when it held that an action which is still pending in state court bars parallel litigation in federal court.

ERROR IN FINDING BAR BASED ON PRIVITY.

The action in *City of Okla. City v. Okla. City Urban Renewal Auth.*, 1999 OK 71, 988 P.2d 901 (*"Tal I"*), relied upon by the court as a bar to the Tals' condemnation claims, was an action to which neither Tal Tech nor BT 2000 was a party and in which neither the issue of fraud or the condemnation was litigated. The Tenth Circuit held that the judgment in *Tal I* shows that the issue of fraud related to the condemnation was litigated in that action and that Tal Tech and BT 2000 are precluded by that judgment from asserting a claim for fraudulent condemnation as a claim, or as a predicate, for RICO in the present case. The court is mistaken.

Tal I was a *qui tam* action brought by the City of Oklahoma City against the Urban Renewal and two of the Hogans[7], in response to a taxpayer demand made pursuant to Oklahoma *qui tam* statutes.[8] There were no other parties to the action. Thus, to find that Tal Tech and BT 2000 were barred from asserting a claim for fraudulent condemnation, the Tenth Circuit relied on its holding in *Kenman Eng'g v. City of Union*, 314 F.3d 468 and held that because there was privity between Tal Tech, BT 2000, and the City, Tal Tech and BT 2000 were barred by *Rooker-Feldman* from asserting any claims which were raised or could have been raised in *Tal I*.[9]

This was plain error in light of this Court's recent decision in *Lance v. Dennis*, overruling *Kenman* and holding that the Tenth Circuit erred when it relied upon *Kenman* to hold that privity between

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[7] Bricktown TMK/Hogan Entertainment, L.L.C., and Bricktown Parking Investors, L.L.C., - Respondents/Appellants Nos. 4 and 5 here.

[8] The *Tal I* suit was a "friendly" *qui tam* related Declaratory Judgment suit, whereby, all parties were in agreement with the relief sought. This is not the first time that the City attempted to prevent taxpayers from filing *qui tam* suits and misuse the Declaratory Judgment, without naming or allowing taxpayers' intervention. In another recent *qui tam* ruling of the Oklahoma Supreme Court, the court referred to the City's and Urban Renewal's filing a friendly Declaratory judgment against themselves and stated: ... "The obvious function in filing the declaratory judgment suit was to divert the filing of a *qui tam* suit by reaching the same issues which would have been decided, had a *qui tam* suit become necessary." *Oklahoma City Urban Renewal Authority v. the City of Oklahoma City, et al.*, 110 P.3d 550 (Okla. 2005), at 559. Unfortunately, as noted by the Oklahoma Supreme Court in *Tal IV* the actual effect of the *Tal I* was to avoid the more controversial and difficult issues raised by the taxpayers and to preclude those issues from ever being litigated.

[9] Moshe Tal is a known Oklahoma City public advocate. He was the leader and founder of the *Taxpayers Against Ripoffs taxpayers'* citizens group (now incorporated under the name: *Taxpayers for Honest Government, Inc.*- a non-profit corporate entity - Tal is its President). Tal is also the president of the two businesses and corporate Petitioners- Tal Tech and BT-2000. Certainly, it stretches the concept of privity to hold that Tal Tech and BT 2000 are in "privity" with the City and/or Urban Renewal, just because Tal was president of these corporations, especially when Tal, as leader of T.A.R. (not as president of Tal tech or BT-2000), was not allowed to intervene in the friendly Declaratory Judgment suit.

parties and non-parties barred the non-parties' litigation of the same or related claims under *Rooker-Feldman*. In *Lance v. Dennis*, 126 S.Ct. 1198, this Court specifically held that the *Rooker-Feldman* doctrine does not bar actions by non-parties to an earlier state court judgment based on privity that might bar a claim for purposes of preclusion law. Thus, while it is true for purposes of preclusion law, that the *qui tam* action might preclude Tal Tech and BT 2000, as citizens, from relitigating issues that were or could have been raised in the state court *qui tam* action, they are not precluded by *Rooker-Feldman* from asserting a claim for fraudulent condemnation in federal court.

Furthermore, the decisions in *Tal I* and *Tal IV* make it clear that neither fraud nor the condemnation were issues before the court. The only issue raised by the City in *Tal I* was the lawfulness of three redevelopment contract(s). *Tal IV*, 2007 ¶ 6, 61 P.3d 234, 240. The City did not raise any issues of fraud or condemnation in the trial court and neither the City, Urban Renewal nor the Hogans, sought review of the trial court's decision. *Tal IV*, 2003 OK 97 ¶ 8, 61 P.3d at 241. The appeal in *Tal I* arose out of the failed attempt of Moshe Tal and Taxpayer Against Ripoffs ("TAR"), as *qui tam* relators, to intervene in the state trial court action between the City and Urban Renewal. *Tal IV*, 2003 OK 97 ¶¶ 7, 8, 61 P.3d at 241. In *Tal I*, Moshe Tal and TAR attempted to intervene to assert, among other claims, fraud on the part of the City, Urban Renewal and others in the making of the redevelopment contract(s), and misappropriation of tax funds. *Tal IV*, 2003 OK 97 ¶ 7, 61 P.3d at 241. The trial court denied the motion to intervene. Moshe Tal and TAR appealed the denial of their motion to intervene. *Tal IV*, 2003 OK 97 ¶ 8, 61 P.3d at 241. Intervention was the ***only*** issue on appeal since Moshe Tal and TAR were never parties to the litigation and therefore could not appeal the judgment of the district court as to any other issues. *Tal IV*, 2003 OK 97 ¶ 9, 61 P.3d at 241. *Tal I* even expressly stated that only the narrow issue of whether the trial court erred in denying taxpayers' motion to intervene (and a related motion for a continuance) was before the court. *Tal I*, 1999 OK 71, at ¶ 14, 988 P.2d 901, 905; *Tal IV*, 2002 OK 97 ¶ 9,61 P.2d at 241. Thus, any statements by the Oklahoma Supreme Court relating to fraud are merely *dicta*, since the issue of fraud was not before it. Therefore, the Tenth Circuit's reliance on the Oklahoma Court's alleged finding that there was no fraud in regards to the

condemnation, has no basis in fact.

ERROR IN FINDING PRECLUSION WHERE THE STATE ACTION IS STILL PENDING.

In regard to the condemnation action, the Tenth Circuit held that even though the condemnation action on Tal Tech's property is still pending in state court, *Rooker-Feldman* precludes Tal Tech or BT 2000 from asserting a claim in federal court asserting that the condemnation was fraudulent. To reach this conclusion, the Tenth Circuit again relied on *Kenman Eng'g,* 314 F.3d at 474 to hold that *Rooker-Feldman* precludes a federal action arising out of a condemnation even though the state condemnation proceeding is not yet final. This holding is in direct conflict with this Court's decision in *Exxon Mobil,* 544 U.S. at 292. In *Exxon*, this Court held that *Rooker-Feldman* does not bar parallel state and federal litigation. *Exxon Mobil,* 544 U.S. at 292.

The state condemnation action is still pending.[10] There has never been a trial on the amount of compensation in the condemnation. While there was an interlocutory appeal of the judgment holding that the condemnation was for a proper public purpose, Tal Tech has filed a petition in that action to vacate the judgment on the grounds of fraud in obtaining that judgment.[11]

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[10] *See* OSCN's Case Docket Reports (www.oscn.net) for the following two (2) cases: *City of Oklahoma City v. Tal technologies Inc.*, CJ-97-2034 (the initial condemnation suit); and *Tal, et al., v. Hogan, et al.,* CJ-04-7943 (the Tals' petition to vacate the condemnation judgment obtained by fraud, and the tortious interference with business claims - the 'state claims" which were dismissed without prejudice by the District Court. This latest suit was filed within one year from the time the District Court issued it Judgment).

[11] The Tenth Circuit also found that the based upon *Kelo v. City of New London*, 125 S.Ct. 2655, 2665-66 (2005), the finding that condemnation purportedly undertaken for public use but then transferred to another entity for private sue, was not a constitutional violation which constituted fraud. However, this holding is incorrect and actually conflicts with *Kelo*. In *Kelo*, this Court held that whether a state may condemn private property for private use, depended upon state law. Since *Kelo*, and the filing of the condemnation action against Tal Tech's property, the Oklahoma Supreme Court held in *The Board of Commissioners of Muskogee County v. Lowery*, 2006 OK 31, 136 P.3d 639, that

CERTIORARI REVIEW IS REQUIRED TO CORRECT THE TENTH CIRCUIT'S CONTINUED MISAPPLICATION OF THE *ROOKER-FELDMAN* DOCTRINE.

Despite this Court's holdings to the contrary in recent decisions which hold that privity and parallel state court proceedings do not bar federal litigation under *Rooker-Feldman*, and despite the fact that these cases directly overrule the case relied upon by the Tenth Circuit, the Tenth Circuit has held that under *Rooker-Feldman* – privity bars Tal Tech and BT 2000 from asserting claims based on fraudulent condemnation and that a pending state court action also bars fraudulent condemnation claims. The Tenth Circuit's continued disregard of this Court's pronouncements on the applicability of the *Rooker-Feldman* doctrine, calls for this Court to grant certiorari and assume jurisdiction to correct the Tenth Circuit's continued misapplication of the *Rooker-Feldman* doctrine.

MISAPPLICATION OF *RES JUDICATA*

1) THE ISSUE OF WHETHER A *QUI TAM* RELATOR'S PERSONAL CAUSES OF ACTION ARE BARRED BY A PRIOR *QUI TAM* IS A QUESTION THAT HAS NOT PREVIOUSLY BEEN DECIDED BY THIS COURT.

The district court held that Moshe Tal was barred by *res judicata* from asserting claims for fraudulent condemnation because he was the *qui tam* "relator" in the *qui tam* action known as Tal III.[12] *See*,

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the Oklahoma Constitution prohibits the condemnation of private property for private use. The Oklahoma Supreme Court also held in *Midwest City v. House of Realty, Inc., et al.*, 2004 OK 56, 100 P.3d 678 and related case - *House of Realty, Inc., v. City of Midwest City*,2004 OK 97, 109 P.3d 314, that a government entity may not condemn private property for one purpose and then transfer it to another governmental entity for another purpose. The holdings in both of these cases are precisely what Tal Tech, BT 2000, and Moshe Tal have asserted and continue to assert in claiming that the condemnation of Tal Tech's property was constitutionally impermissible and constituted fraud.

[12]In its Opinion, the Tenth Circuit did not address the *res judicata* issues against Moshe Tal even though the issues were well-briefed in his Opening Brief and the Joint Petition for Rehearing. However, by not addressing the

10/30/02 Transcript, Appendix 81-101; Tals'3/12/03 Response to motions to Dismiss, Appendix, pp. 315-352.. According to the district court, Moshe Tal had his opportunity to assert his private cause of action in the *qui tam*, and because he failed to do so, *res judicata* now bars him from asserting that claim.

A *QUI TAM* RELATOR BRINGS THE ACTION ON THE PART OF THE GOVERNMENT AND CANNOT ASSERT PERSONAL CLAIMS IN THE SUIT, THEREFORE *RES JUDICATA* DOES NOT APPLY TO THE RELATOR'S PERSONAL CLAIMS.

In a taxpayers' suit (*Qui Tam*), the Relator (a/k/a the "whistleblower"), brings the action to recover money or property belonging to the government which was obtained fraudulently. Under the False Claims Act, a private party, called a relator, is permitted to bring an action in the name of the Government against anyone who submits to it a false claim. *Freedman v. Rite Aid Corp.*, 152 F. Supp. 2d 766 (E.D.PA, 2001)

"Although *qui tam* actions allow individual citizens to initiate enforcement against wrongdoers who cause injury to the public at large, the Government remains the real party in interest in any such action." *Minotti* v. *Lensink*, 895 F.2d 100, 104 (2d Cir. 1990). The "United States is the real party in interest in any False Claims Act suit, even where it permits a *qui tam* relator to pursue the action on its behalf." *United States ex rel. Milam* v. *University of Texas*, 961 F .2d 46, 50 (4th Cir. 1992)

Because a realtor is bringing the action in a representative capacity, relator is acting in the public interest and is not at liberty and has no standing to enforce private rights, hence private causes of action may not be brought in a taxpayer suit. *Satsky v. Paramount Communications, Inc.*, 7 F.3d 1464, 1469 (10th Cir. 1993). Therefore, suits on behalf of a public entity will not operate as *res judicata* against private rights of action: "to the extent these claims involve injuries to purely private interests, which the State cannot raise, then

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district court's decision, the Tenth Circuit has, in effect, affirmed the district court judgment on the issue of *res judicata* against Moshe Tal.

the claims are not barred [by *res judicata*]. By "purely private interests," we mean claims that the State has no standing to raise." *Satsky, supra*, at 1470.

BECAUSE MOSHE TAL WAS A RELATOR, HE COULD NOT ASSERT HIS PERSONAL CLAIMS IN *THE QUI TAM* AND THE JUDGMENT IN THE *QUI TAMS* IS NOT *RES JUDICATA* AS TO HIS PERSONAL CLAIMS.

Moshe Tal's involvement in the *qui tams* was as the *qui tam* relator representing the government's interest, not his own. As a relator, he was not a party and was not allowed to join or litigate his private claims in the *qui tam*. Because he was not a party and not able to assert his private interests, then his personal claims are not barred by *res judicata*.

The Tenth Circuit's affirmance of the district court's dismissal of Moshe Tal's personal claims related to the fraudulent condemnation on *res judicata* grounds, violates Tenth Circuit precedent and presents a question of first impression for this Court. Moshe Tal thereby respectfully asks this Court to grant certiorari to review and render an opinion on this issue.

2) THE HOLDING THAT MOSHE TAL'S CLAIMS ARE BARRED DESPITE THE OCCURRENCE OF NEW FACTS AND LAW, APPLIES *RES JUDICATA* IN A MANNER WHICH DIRECTLY CONFLICTS WITH THE DECISIONS OF THIS COURT AND THE TENTH CIRCUIT'S OWN PRECEDENT

The Tenth Circuit affirmed, by not deciding, the district court's dismissal of Moshe Tal's fraudulent condemnation claims on the grounds of *res judicata*. However, finding that *res judicata* bars Moshe Tal's claim, directly conflicts with the decisions of this Court and the Tenth Circuit's own precedent.[13] Both courts have held that where there is a significant change of facts and/or law, *res judicata* will not bar a subsequent suit. However, despite significant change in

[13]Moshe Tal has standing to bring the condemnation claims because the property was transferred to him by Tal Tech as payment on promissory note.

facts and law involving the condemnation of Tal Tech's property, the district court held that Tal was barred by *res judicata* from asserting his claim for fraudulent condemnation

***RES JUDICATA* AND COLLATERAL ESTOPPEL DO NOT BAR RELITIGATION WHERE THERE HAS BEEN A SIGNIFICANT CHANGE IN FACTS AND/OR LAW SINCE THE JUDGMENT IN THE INITIAL ACTION**

It has long been held that collateral estoppel and *res judicata* do not bar a suit where there has been a significant change in underlying law or facts since the bringing of a prior suit on the same course of wrongful conduct. *Lawlor v. Nat' Screen Serv. Crop.*, 349 U.S. 322, 327-28 (1955); *see also Restatement § 24 cmt. f* ("Material operative facts occurring after the decision of an action with respect to the same subject matter may in themselves, or taken in conjunction with the antecedent facts, comprise a transaction which may be made the basis of a second action not precluded by the first.").

In *Spradling v. City of Tulsa,* 198 F.3d 1219 (10th Cir. 2000) the Tenth Circuit held:

> The doctrines of collateral estoppel and res judicata, however, apply only in cases where controlling facts and law remain unchanged. [citation omitted] Consequently, res judicata and collateral estoppel are inapplicable where, between the first and second suits, an intervening change in the law or modification of significant facts create new legal conditions. *Id.* The Supreme Court decision in *Auer* constitutes an intervening change in the law sufficient to render collateral estoppel and res judicata inapplicable to the present case. *See, e.g., Community Hospital v. Sullivan,* 986 F.2d 357, 360 (10th Cir. 1993) (refusing to apply collateral estoppel following change in facts and law).

Spradling, at 1223.

THE SIGNIFICANT CHANGE IN FACTS AND LAW SINCE THE INITIAL CONDEMNATION JUDGMENT MANDATES THAT *RES JUDICATA* DOES NOT BAR MOSHE TAL'S CLAIMS FOR FRAUDULENT CONDEMNATION.

In the present case, there was a significant change in the facts regarding the fraudulent condemnation. The City and Urban Renewal have maintained from the beginning that condemnation was for public use. The Tals maintained that the City and Urban Renewal planned to use it for private development. However, because Tal had no proof that condemned property would be used for private use, he could not support a claim for fraudulent condemnation. However, now that a portion of the condemned property has been transferred to a private individual, and actually developed for private use, Tal can support his claim for fraudulent condemnation and *res* judicata is no bar.

The law has also changed significantly since the *qui tam* judgments were entered. Tal's claim for fraudulent condemnation is based, in part on the claim that private property cannot be taken for private use nor can one governmental entity condemn property and then transfer it to another governmental entity for another use. At the time of the *qui tam* and judgment, there was no Oklahoma authority on these two issues. However, since the *qui tam* judgment was entered, the Oklahoma Supreme Court has decided three cases which support Tal's claims. *See The Board of Commissioners of Muskogee County v. Lowery*, 2006 OK 31, 136 P.3d 639 (private property cannot be taken for private use); *Midwest City v. House of Realty, Inc., et al.*, 2004 OK 56, 100 P.3d 678 and related case - *House of Realty, Inc., v. City of Midwest City,*2004 OK 97, 109 P.3d 314 (one governmental entity cannot condemn private property and then transfer it to another governmental entity for another use).

The jurisprudence of this Court and its progeny hold that *res judicata* cannot be used to bar causes of action where there has been a significant change in facts or law affecting the case. The Tenth Circuit decision here directly conflicts with this Court's pronouncements. Thus, because both the operative facts and the law have changed significantly since the *qui tam* judgment was filed, the Tenth Circuit's decision upholding the district court's dismissal of Moshe Tal's claims for fraudulent condemnation, based on *res*

judicata should be reversed.

Respectfully submitted,

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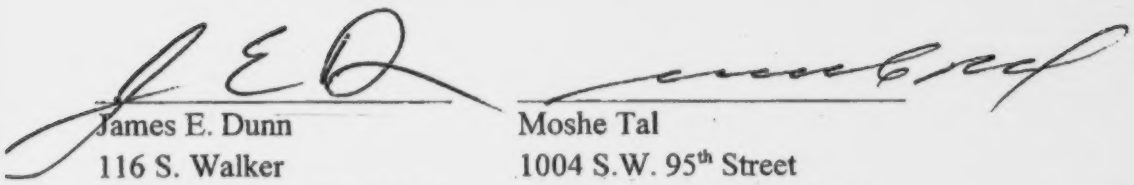
judicata should be reversed.

Respectfully submitted,



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Supreme Court, U.S.
FILED

06-823 DEC 11 2006

OFFICE OF THE CLERK

No. _____

IN THE
Supreme Court of the United States

MOSHE TAL; BRICKTOWN 2000, INC.;and TAL TECHNOLOGIES, INC.,

Petitioners,

v.

DAN RANDOLPH HOGAN; TMK/HOGAN JOINT VENTURE, a.k.a. COMMERCIAL REAL ESTATE SERVICES JOINT VENTURE; HOGAN PROPERTY MANAGEMENT, L.L.C.; BRICKTOWN-TMK/ HOGAN PARKING, L.L.C.; BRICKTOWN-TMK/HOGAN ENTERTAINMENT, L.L.C.; MARK D. ELGIN; STONEGATE MANAGEMENT COMPANY, L.L.C.; ELGIN DEVELOPMENT COMPANY, L.L.C.; TDC COMPANY, L.L.C.; and, TIANA P. DOUGLAS

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE TENTH CIRCUIT COURT OF APPEALS

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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Dated: December 11, 2006.

APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI

TABLE OF CONTENTS

Item **Page(s)**

I. RULE 14 1(h)(i)(i): Opinion and order entered in conjunction with the judgment sought to be reviewed

1. Published Opinion, United States Court of Appeals for the Tenth Circuit's *Tal et al., v. Hogan, et al.*, 453 F.3d 1244 (10th Cir. 2006) - Dated 6/29/06 ..... **1-45**

2. Order - Tenth Circuit Court of Appeals, *Tal et al., v. Hogan, et al.*, Appeal No. 03-6293 - Denying Appellants' Petition For Rehearing - Dated 9/11/06 ..... **46**

3. Order - U.S. District Court for the Western District of Oklahoma, *Tal, et al., v. Hogan, et al.*, CIV-02-324F, dismissing all of Tals' claims - filed 9/30/03 ..... **47-75**

4. Judgment - U.S. District Court for the Western District of Oklahoma, *Tal, et al., v. Hogan, et al.*, CIV-02-324F, dismissing all of Tals' claims - filed 9/30/03 ..... **76-77**

5. Order- U.S. District Court for the Western District of Oklahoma, *Tal, et al., v. Hogan, et al.*, CIV-02-324F, dismissing all of Moshe Tal's personal claims, and other rulings - filed 10/31/02 ..... **78-80**

6. Transcript of Hearing held in the District Court - 10/30/02 ..... **81-101**

III. RULE 14 1(h)(i)(vi): Other Material Essential to Understand the Petition:

1. Second Amended Complaint - filed 12/16/02 ..... **102-183**

2. RICO Case Statement- filed 12/16/02 ..... **184-200**

3. The Tals' Joint Petition for Rehearing to the Tenth Circuit- filed 7/13/06 ..... **201-247**

4. First Amended Complaint - filed 4/1/02 ..... **248-314**

5. Petitioners' Response to all Defendants' Motions to Dismiss, filed in District Court on 3/12/03 ..... **315-352**

453 F.3d 1244

MOSHE TAL; BRICKTOWN 2000, INC.; TAL TECHNOLOGIES, INC., Plaintiffs - Appellants, v. DAN RANDOLPH HOGAN; TMK/HOGAN JOINT VENTURE, also known as Commercial Real Estate Services; HOGAN PROPERTY MANAGEMENT, LLC; BRICKTOWN-TMK/HOGAN PARKING, LLC., also known as Bricktown-SMC/Hogan, LLC; BRICKTOWN-TMK/HOGAN ENTERTAINMENT, LLC, also known as Bricktown Entertainement, LLC; MARK D. ELGIN; STONEGATE MANAGEMENT COMPANY, LLC; ELGIN DEVELOPMENT COMPANY, LLC; TDC COMPANY, LLC; TIANA P. DOUGLAS, Defendants - Appellees. THE CITY OF OKLAHOMA CITY; OKLAHOMA CITY URBAN RENEWAL AUTHORITY, Amici-Curie.

No. 03-6293

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

453 F.3d 1244; 2006 U.S. App.

LEXIS 16437; 2006-1 Trade Cas. (CCH) P75,319

June 29, 2006, Filed

PRIOR HISTORY: [**1] Appeal from the United States District Court for the Western District of Oklahoma. (D.C. No. 02-CV-324-F). *City of Oklahoma City v. Oklahoma City Urban Renewal Auth., 1999 OK 71, 988 P.2d 901, 1999 Okla. LEXIS 85 (Okla., 1999)*

DISPOSITION: AFFIRMED.

COUNSEL: Submitted on the Briefs: *

> * After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See *Fed. R. App. P. 34(a)*; *10th Cir. R. 34.1*. The case is therefore ordered submitted without oral argument.

Moshe Tal, Pro se, Plaintiff-Appellant.

James E. Dunn, James E. Dunn & Associates, P.C., of Oklahoma City, Oklahoma, for Plaintiffs-Appellants Bricktown 2000, Inc. and Tal Technologies, Inc.

Melvin R. McVay, Jr., Robert N. Sheets, Lloyd T. Hardin, Jr., Heather L. Hintz, Phillips, McFall, McCaffrey, McVay & Murrah, P.C., Oklahoma City, Oklahoma, for Defendants-Appellees Hogan, TMK/Hogan Joint Venture; Hogan Property Management, LLC; Bricktown-TMK/Hogan Parking, LLC; Bricktown-TMK/Hogan Entertainment, LLC; Mark D. Elgin; Stonegate Management Company, LLC; Elgin Development Company, LLC, and TDC Company, LLC.

Gerard F. Pignato, Tom Cooper and Brad L. Roberson, Pignato

& Cooper, P.C., Oklahoma [**2] City, Oklahoma, for Defendant-Appellee Tiana P. Douglas.

William R. Burkett, Daniel T. Brummitt, Office of Municipal Counselor, Oklahoma City, Oklahoma, for Amicus Curiae The City of Oklahoma City.

Leslie V. Batchelor, Dan Batchelor, Center for Economic Development Law, Oklahoma City, Oklahoma, for Amicus Curiae Oklahoma City Urban Renewal Authority.

JUDGES: Before BRISCOE, MURPHY and O'BRIEN, Circuit Judges.

OPINION BY: O'Brien

OPINION: [*1249] **O'Brien**, Circuit Judge.

This case is the latest in a long running dispute between Moshe Tal, the founder and president of both Tal Technologies, Inc., (Tal, Inc.) and Bricktown 2000, Inc. (Bricktown, Inc.), and Oklahoma City, the Oklahoma City Urban Renewal Authority (Renewal Authority) and various private Developers n1 over the condemnation of Tal, Inc.'s land and Bricktown, Inc.'s failure to acquire redevelopment rights for the area in downtown Oklahoma City known as Bricktown. On March 14, 2002, Tal, Tal, Inc. and Bricktown, Inc. filed suit in the United States District Court for the Western District of Oklahoma against the Developers and the executive director of the Renewal Authority, Tiana Douglas, alleging violations of the Racketeer Influenced [**3] and Corrupt Organizations Act (RICO), *18 U.S.C. § 1962*, and the Sherman Act, *15 U.S.C. § 2*. They also asserted pendant state law claims for tortious interference with business and fraudulent condemnation of Tal, Inc.'s land. On September 30, 2003, the district court dismissed the [*1250] claims and the plaintiffs appealed. We exercise jurisdiction under *28 U.S.C. § 1291* and **AFFIRM**.

n1 The Developers include: Dan Randolph Hogan; TMK/Hogan Joint Venture, a.k.a. Commercial Real Estate Services Joint Venture; Hogan Property Management, LLC.; Bricktown-TMK/Hogan Parking, LLC, a.k.a. Bricktown-SMC/Hogan, LLC; Bricktown-TMK/Hogan Entertainment, LLC, a.k.a. Bricktown Entertainment, LLC; Mark D. Elgin; Stonegate Management Company, LLC; Elgin Development Company, LLC; and TDC Company, LLC.

BACKGROUND

Under the Oklahoma Urban Redevelopment Law, 11 *OKLA. STAT. TIT. § § 38-101 to 123*, cities in Oklahoma may create urban renewal authorities, which can **[**4]** prepare urban renewal plans for specific urban renewal areas. 11 *OKLA. STAT. TIT. § § 38-101(11), 38-106(A).* The powers of an urban renewal authority are exercised by commissioners. 11 *OKLA. STAT. TIT. § 38-107(E).* However, under 11 *OKLA. STAT. TIT. § 38-107(F)*, urban renewal authorities "may employ an executive director . . . and such other agents and employees, permanent and temporary, as it may require. . . ." The urban renewal plans must meet the requirements of the statute and be approved by the municipal governing body. 11 *OKLA. STAT. TIT. § 38-106.* One statutory requirement is that the plan allow private developers the opportunity to obtain redevelopment contracts. 11 *OKLA. STAT. TIT. § 38-104.*

Pursuant to the Oklahoma Urban Redevelopment Law, Oklahoma City created the Renewal Authority, "a public body corporate." 11 *OKLA. STAT. TIT. § 38-107(A).* In 1976, the Renewal Authority proposed an Urban Renewal Plan covering an area in Oklahoma City known as Bricktown. In 1993, the residents of Oklahoma City approved a sales tax to be used to redevelop sections of the city under the guidance of the Oklahoma City Metropolitan Area projects program (MAPS). The Bricktown redevelopment **[**5]** plan was amended in 1997

as the MAPS Sports-Entertainment-Parking Support Redevelopment Plan. Tiana Douglas served as the executive director of the Renewal Authority during the period at issue.

On March 25, 1997, the City brought a condemnation action against Tal, Inc. seeking to condemn two parcels of Tal, Inc.'s land, totaling 1.4 acres, that fronted a canal running into Bricktown. The City's intended use was public parking, public recreation and parks. Tal, Inc. objected to the condemnation, challenging the public necessity of the taking. The trial court overruled Tal, Inc.'s objection and entered a condemnation order on August 28, 1997, which was modified on October 2, 1997. The City then transferred the land to the Renewal Authority "with the proviso that [the] City would receive the net proceeds from the sale of the property by [the Renewal Authority] and that the price paid to the Urban Renewal Authority for the property would be not less than the actual fair market value of [the] property." *City of Okla. City v. Okla. City Urban Renewal Auth., 1999 OK 71, 988 P.2d 901, 905 (Okla. 1999)* (*Tal I*) (internal quotations omitted).

Also in 1997, in an **[**6]** effort to encourage development of a new sports and entertainment district by private developers, the city council approved the Bricktown redevelopment plan. *Tal I, 988 P.2d at 905*. The Renewal Authority requested proposals from developers interested in obtaining the redevelopment contract for Bricktown. Tal, Inc. and Bricktown, Inc. applied for the contract but "the City Council, after widely publicized hearings and based on an extremely close vote, ultimately awarded the [redevelopment contract] to . . . TMK/Hogan rather than to Tal's group. The final decision was made by the City Council only after two years of public meetings, public notices, public hearings, and citizen review." n2 *Id.* **[*1251]** The Renewal Authority then "received fair market value for the [condemned] property" from the Developers in the amount of $ 3.3 million. *Id.*

n2 Specifically, the Renewal Authority and

TMK/Hogan entered into the redevelopment contract on July 21, 1998. The city council also awarded a parking redevelopment contract to Bricktown Parking Investors, LLC, on December 19, 1997. Bricktown Parking Investors, LLC is not a party to the present dispute.

[**7]

Subsequently, Tal along with the organization Taxpayers Against Ripoffs (TAR), filed a state *qui tam* action against the Renewal Authority alleging Tal, Inc.'s land had been impermissibly taken for private use and the redevelopment contract was awarded amid "bid-rigging." They also demanded that the City file a lawsuit to recover the property and declare the contract void. *Tal I, 988 P.2d at 903-04*. On January 26, 1999, the City filed a declaratory action against the Renewal Authority to settle whether the condemnation and the transfer to the Renewal Authority had been valid. *Id. at 904*. Tal and TAR sought to intervene twice but were denied. *See Tal I, 988 P.2d at 904-05*; *Okla. ex rel. Tal v. City of Okla. City, 2000 OK 70, 19 P.3d 268 (Okla. 2000), cert. denied, 534 U.S. 814, 122 S. Ct. 40, 151 L. Ed. 2d 13 (2001)* (*Tal III*). n3

n3 *Tal II* was an attempt by Tal and TAR to challenge the operation of a baseball stadium located in Bricktown. The district court dismissed and the Oklahoma Supreme Court affirmed. *See Okla. ex rel. Tal v. Norick, 1999 OK 85, 991 P.2d 999, 1001 (Okla. 1999)* (*Tal II*). *Tal IV* was an appeal of the award of attorney's fees against Tal and TAR in *Tal III*. Although the Oklahoma Supreme Court reversed the award of attorney's fees, it did reiterate *Tal III*'s holding that Tal, Inc. was precluded from asserting fraud was appropriate. *See Okla. ex rel. Tal. v. City of Okla. City, 2002 OK 97, 61 P.3d 234, 247 (Okla. 2002)* (*Tal IV*). The Oklahoma Supreme Court recently dismissed as premature an appeal from summary judgment in favor of the City and the Renewal Authority

involving the validity of the underlying transactions. *See Okla. City Urban Renewal Auth. v. City of Okla. City, 2005 OK 2, 110 P.3d 550 (Okla. 2005)* (*Tal V*). These enumerated *Tal* cases are separate from the initial condemnation action and the corresponding direct appeals.

[8]**

On September 28 and November 2, 1999, almost two years after the entry of the condemnation order, Tal, Inc. filed two motions to reconsider the condemnation order based on newly discovered evidence. In both motions, Tal, Inc. claimed the City had fraudulently deceived the court and delivered the land to the Renewal Authority for sale to private developers, which it argued was a non-public use. Tal, Inc. also argued the Renewal Authority had exceeded the scope of its eminent domain power by condemning the land for use as parking, a usage for which Tal, Inc. had already intended the land, and then by changing the development of the land from parking to non-parking. The trial court denied both motions. Tal, Inc. appealed to the Oklahoma Court of Civil Appeals which construed the appeal as alleging that the City had obtained the condemnation order by fraud. *City of Oklahoma City v. Tal Techs., Inc.*, Case No. 94,045, at 5 n.3 (Okla. Civ. App. July 31, 2001). The Court of Civil Appeals affirmed, holding Tal, Inc. had waived its fraud claim by failing to exercise due diligence in discovering the fraud. It also concluded that the City had properly condemned Tal, Inc.'s land for a valid **[**9]** public purpose. *Id.* at 7. Tal, Inc.'s subsequent petitions for certiorari to the Oklahoma Supreme Court and the United States Supreme Court were denied. *See Tal Techs., Inc. v. City of Okla. City, 535 U.S. 987, 122 S. Ct. 1539, 152 L. Ed. 2d 465 (2002).*

On March 14, 2002, Tal, Bricktown, Inc. and Tal, Inc. filed a complaint against the Developers and Douglas in the United States District Court for the Western District of Oklahoma. They alleged the Developers and Douglas conspired to fraudulently

condemn Tal, Inc.'s land; plotted to monopolize under the Sherman Act, *15 U.S.C. § 2*; participated in "bid-rigging" in violation of RICO, *18 U.S.C. § 1962*, and engaged in tortious interference with business under Oklahoma law. On April 1, **[*1252]** 2002, Plaintiffs filed their First Amended Complaint. Both the Complaint and the First Amended Complaint were signed by Tal, appearing *pro se* for all three plaintiffs. On March 18, 2002, the district court, acting *sua sponte,* ordered Bricktown, Inc. and Tal, Inc. to retain counsel within thirty days. Tal filed a motion to reconsider, which was denied on July 2, 2002. Thereafter, Tal, Inc. **[**10]** and Bricktown, Inc. secured counsel.

On May 31, 2002, the Developers and Douglas filed motions to dismiss the First Amended Complaint. n4 The district court heard the motions on October 30, 2002, and entered a written order granting Defendants' motions on October 31. However, Bricktown, Inc. was granted leave to refile its RICO and Sherman Act claims and Tal, Inc. was granted leave to refile its RICO claims. All of Tal's individual claims were dismissed.

> n4 On June 4, 2002, the Renewal Authority and the City filed an amicus curiae brief in support of the motions to dismiss.

On December 16, 2002, Tal, Inc. and Bricktown, Inc. filed a Second Amended Complaint and a RICO Case Statement. Tal, Inc. realleged its conspiracy to condemn by fraud claim against Douglas. n5 Tal, Inc. and Bricktown, Inc. alleged RICO violations against the Developers under *§ 1962(b)*, against Douglas under *§ 1962(c)*, and against the Developers and Douglas under *§ 1962(d)*. Bricktown, Inc. asserted conspiracy to monopolize under the Sherman **[**11]** Act, *15 U.S.C. § 2*, against the Developers and Douglas. The Second Amended Complaint also included state law claims for tortious interference with business against the Developers and conspiracy to condemn by fraud against Douglas. On January 31, 2003, the Developers and Douglas filed motions to dismiss

the Second Amended Complaint under *FED. R. CIV. P. 12(b)(6).*

> n5 The district court did not rule on the conspiracy to condemn by fraud claim in its October 31, 2001 order because the claim had been voluntarily withdrawn.

On September 30, 2003, the district court granted the Developers and Douglas' motions to dismiss the Second Amended Complaint. This appeal followed.

DISCUSSION

A motion to dismiss under *FED. R. CIV. P. 12(b)(6)* "admits all well-pleaded facts in the complaint as distinguished from conclusory allegations." *Mitchell v. King, 537 F.2d 385, 386 (10th Cir. 1976).* "The court's function **[**12]** on a *Rule 12(b)(6)* motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted." *Sutton v. Utah State Sch. for the Deaf & Blind, 173 F.3d 1226, 1236 (10th Cir. 1999)* (quotation omitted). The legal sufficiency of a complaint under *Rule 12(b)(6)* is a question of law which this Court reviews *de novo. Id.*; *see S. Disposal, Inc. v. Tex. Waste Mgmt., 161 F.3d 1259, 1261-62 (10th Cir.1998).* "In doing so, all facts alleged in the complaint are taken as true and all reasonable inferences are indulged in favor of the plaintiffs." *GF Gaming Corp. v. City of Black Hawk, Colo., 405 F.3d 876, 881 (10th Cir. 2005).* "This court can affirm the district court's dismissal on any ground sufficiently supported by the record." *Id. at 882.*

I. Tal's Individual Claims

The district court dismissed Tal's individual antitrust and RICO claims in the First Amended Complaint for lack of standing. Tal challenges this ruling as well as the district court's order denying him the ability **[**13]** to represent Tal, Inc. and

Bricktown, Inc. *pro se.*

[*1253] *A. Standing to file antitrust and RICO claims*

In order to have standing under Article III of the Constitution, a plaintiff must allege an "injury-in-fact." *Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992).* However, the standing requirements in the antitrust context are more rigorous than that of the Constitution. Thus, "[h]arm to the antitrust plaintiff is sufficient to satisfy the constitutional standing requirement of injury in fact, but the court must make a further determination whether the plaintiff is a proper party to bring a private antitrust action." *Assoc. Gen. Contractors of Calif., Inc. v. Calif. State Council of Carpenters, 459 U.S. 519, 535 n.31, 103 S. Ct. 897, 74 L. Ed. 2d 723 (1983).* This additional determination stems from *section 4* of the Clayton Act, *15 U.S.C. § 15*, which states "[a]ny person . . . injured in his business or property by reason of anything forbidden in the antitrust laws may sue . . . and shall recover threefold the damages . . . sustained, and . . . a reasonable attorney's fee." n6 Thus, antitrust standing requires **[**14]** a private plaintiff to show "(1) an 'antitrust injury'; and (2) a direct causal connection between that injury and a defendant's violation of the antitrust laws." *Ashley Creek Phosphate Co. v. Chevron USA, Inc., 315 F.3d 1245, 1254 (10th Cir. 2003); see Sports Racing Services, Inc. v. Sports Car Club of America, Inc., 131 F.3d 874, 882 (10th Cir. 1997); City of Chanute, Kan. v. Williams Natural Gas Co., 955 F.2d 641, 652 (10th Cir. 1992).* n7 An antitrust injury is defined as an "injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful." *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489, 97 S. Ct. 690, 50 L. Ed. 2d 701 (1977).*

> n6 "The private antitrust action continues to be the principal mechanism by which the antitrust laws are enforced. As many as 90% of antitrust cases are brought by private plaintiffs." HERBERT HOVENKAMP,

FEDERAL ANTITRUST POLICY: THE LAW OF COMPETITION AND ITS PRACTICE 593 (2d ed. 1999).

n7 In *Reazin v. Blue Cross and Blue Shield of Kansas, Inc.*, we pointed out that there may be some interdependence between "antitrust injury" and "antitrust standing." *899 F.2d 951, 960-61 (10th Cir. 1990)*. In *City of Chanute*, we clarified "[a]n antitrust injury is different from antitrust standing. *Standing cannot be established without an antitrust injury*, but the existence of an antitrust injury does not automatically confer standing." *955 F.2d at 652 n.14* (internal citation omitted and emphasis added). *See also Bell v. Dow Chem. Co., 847 F.2d 1179, 1182 (5th Cir. 1988)* ("Antitrust injury is a component of the standing inquiry, not a separate qualification.").

[15]**

Section 4 of the Clayton Act has been held to exclude personal injuries, *Reiter v. Sonotone Corp., 442 U.S. 330, 339, 99 S. Ct. 2326, 60 L. Ed. 2d 931 (1979)*, as well as derivative injuries such as loss of stock value or employment opportunities. *Sharp v. United Airlines, Inc., 967 F.2d 404, 407-08 (10th Cir. 1992)*; *Curtis v. Campbell-Taggart, Inc., 687 F.2d 336, 338 (10th Cir. 1982)*. "It is settled law that shareholders and employees do not have standing to sue for antitrust violations that injure a corporation." *Jones v. Ford Motor Co., 599 F.2d 394, 397 (10th Cir. 1979)*. This prohibition also includes corporate officers. *Nat'l Indep. Theatre Exhibitors, Inc. v. Buena Vista Distrib. Co., 748 F.2d 602, 608 (11th Cir. 1984)* ("Neither an officer nor an employee of a corporation has standing to bring an action in his own right for an antitrust violation causing injury to the corporation and its business.").

Similarly, RICO allows "[a]ny person injured in his business or property by reason of a violation of *section 1962* of this

chapter [to] sue therefor in any appropriate United States district court and . . . **[**16]** recover threefold the damages he sustains **[*1254]** and the cost of the suit, including a reasonable attorney's fee. . . ." *18 U.S.C. § 1964(c)*. "Congress modeled *§ 1964(c)* on the civil-action provision of the federal antitrust laws, *§ 4* of the Clayton Act. . . ." *Holmes v. Secs. Investor Protection Corp., 503 U.S. 258, 267, 112 S. Ct. 1311, 117 L. Ed. 2d 532 (1992)*. Thus, like the Sherman Act, standing for private individuals under RICO requires a plaintiff to have "been injured in his business or property by the conduct constituting the violation." *Sedima, S.P.R.L. v. Imrex, Co., 473 U.S. 479, 496, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985)*. Similarly, corporate presidents ordinarily do not have standing to assert an individual RICO claim for conduct which harmed the corporation, because such injuries are derivative. *Manson v. Stacescu, 11 F.3d 1127, 1132-33 (2d Cir. 1993)*.

As the district court held, Tal does not have standing to assert his individual RICO and antitrust claims because he has not shown that he suffered an antitrust injury as a result of the Appellees' actions. At best, Tal, Inc., as owner of the condemned property, suffered from the **[**17]** alleged fraudulent condemnation, and Bricktown, Inc., which submitted the redevelopment bid, suffered from the alleged Sherman Act and RICO violations as they relate to the award of development contracts. However, all of Tal's claims derive from his role as the president of Tal, Inc. and Bricktown, Inc. These injuries are the companies' and the companies have the right to vindicate them. Tal cannot assert personal injury based on the condemnation of property he did not own, nor may he claim lost profits and business opportunities from the Appellees' alleged "bid-rigging." Additionally, injury to his reputation, dignity and emotional damages are not the type of injuries redressable by the antitrust laws or RICO which are expressly limited to injuries to "business or property." *15 U.S.C. § 15*; *18 U.S.C. § 1964(c)*; *see Reiter, 442 U.S. at 339*; *Manson, 11 F.3d at 1132*.

B. Right to represent the corporations pro se

It has been our long-standing rule that a corporation must be represented by an attorney to appear in federal court. n8 Consistent with that rule, Local Rule 17.1 of the United States District [**18] Court for the Western District of Oklahoma provides: "[p]arties who are not natural persons may not appear *pro se*." Thus, the district court did not err in denying Tal the right to represent Tal, Inc. and Bricktown, Inc. *pro se* and requiring the corporations to secure counsel.

n8 *See Harrison v. Wahatoyas, LLC, 253 F.3d 552, 556 (10th Cir. 2001)* ("As a general matter, a corporation or other business entity can only appear in court through an attorney and not through a non-attorney corporate officer appearing *pro se*."); *De Villiers v. Atlas Corp., 360 F.2d 292, 294 (10th Cir. 1966)* ("[A] corporation can appear in a court of record only by an attorney at law."); *Flora Constr. Co. v. Fireman's Fund Ins. Co., 307 F.2d 413, 414 (10th Cir. 1962)* ("The rule is well established that a corporation can appear in a court of record only by an attorney at law."). *See also Rowland v. California Men's Colony, 506 U.S. 194, 201-02, 113 S. Ct. 716, 121 L. Ed. 2d 656 (1993)* ("It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel."); *Commercial & R.R. Bank of Vicksburg v. Slocomb, Richards & Co., 39 U.S. (14 Pet.) 60, 65, 10 L. Ed. 354 (1840)* ("[A] corporation cannot appear but by attorney. . . .") *overruled in part by 43 U.S. (2 How.) 497, 11 L. Ed. 353 (1844)*; *Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738, 830, 6 L. Ed. 204 (1824)* ("A corporation, it is true, can appear only by attorney, while a natural person may appear for himself."). *See generally Strong Delivery Ministry Ass'n v. Bd. of Appeals of Cook County, 543 F.2d 32, 33-34 (7th Cir. 1976)* (explaining the justification for the rule).

[**19]

[*1255] Tal tries to avoid this result by arguing: (1) Oklahoma statutes give directors the right to sue on behalf of the corporation; (2) allowing a shareholder to be held liable for a company's shortcomings but not allowing a shareholder to appear *pro se* for the company creates a double standard; (3) small companies may not be able to afford to hire an attorney; and (4) a company has a constitutional right to allow its directors to represent it *pro se.*

Tal's arguments are without merit. First, no Oklahoma statute confers on directors the right to appear *pro se*, only the right to institute suits on behalf of a corporation. *See 18 OKLA. STAT. TIT. § 1016(2).* Moreover, such a right must be exercised in conformity with court rules that require corporations to be represented by counsel. *See Massongill v. McDevitt, 1989 OK CIV APP 82, 828 P.2d 438, 439-40 (Okla. Ct. App. 1989).* Tal's double standard argument ignores the benefits of corporate status. Shareholders, including Tal, enjoy limited liability, unless the corporate veil is pierced because the company is an instrumentality or alter ego of its shareholders. *See Key v. Liquid Energy Corp., 906 F.2d 500, 503-04 (10th Cir. 1990)* **[**20]** (discussing piercing of corporate veil). Moreover, Tal's argument ignores his power as a director to institute a suit, through counsel, on behalf of Tal, Inc. and Bricktown, Inc. There is little reason to believe that a company director will be hindered in advancing the interests of the company by requiring the company to be represented by an attorney.

Finally, Tal seeks to stretch the Constitution beyond elastic limits by arguing, "[i]f . . . a criminal defendant has the right to proceed *Pro Se*, the right should [] apply with even greater force in a civil context. While criminal defendants are entitled to representation by counsel at no charge, . . . no comparable right exists for civil litigants." (Tal's Br. at 30.) Tal's comparison with a criminal defendant's right to an attorney or to appear *pro se* fails for the obvious reason that the Constitution only guarantees a right of representation to criminal defendants. Tal may proceed

pro se, but Tal, Inc. and Bricktown, Inc. may not. Corporations bear the costs associated with filing suit until their claims are vindicated.

II. Tal, Inc.'s Condemnation Claim and the *Rooker-Feldman* Doctrine

Tal, Inc. alleges **[**21]** Appellees violated RICO by engaging in a conspiracy to condemn its property through fraud. The district court held this claim was barred under the *Rooker-Feldman* doctrine as a prior state court case had addressed the propriety of the condemnation. n9 Tal, Inc. tries to avoid this result by arguing: (1) the City committed fraud on appeal to the Oklahoma Court of Civil Appeals and this fraud creates new grounds for yet another appeal; (2) the Defendants in this case were not the defendants in the prior case; (3) the state condemnation case is still pending; (4) the Oklahoma courts ignored the difference in condemnation powers possessed by municipalities and urban renewal authorities; and (5) the condemned property was sold to the developers far below market value.

> n9 The *Rooker-Feldman* doctrine traces back to Justice Willis Van Devanter's seminal opinion in *Rooker v. Fidelity Trust Coompany, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923)* and its elaboration in *District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).*

[22]**

Pursuant to *28 U.S.C. § 1257(a)*, "federal review of state court judgments can be obtained only in the United States Supreme Court." *Kiowa Indian Tribe of Okla. v. Hoover, 150 F.3d 1163, 1169 (10th Cir. 1998).* The *Rooker-Feldman* doctrine precludes "cases brought by state-court **[*1256]** losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."

Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 125 S. Ct. 1517, 1521-22, 161 L. Ed. 2d 454 (2005). Thus, the *Rooker-Feldman* doctrine prevents "a party losing in state court . . . from seeking what in substance would be appellate review of [a] state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy, 512 U.S. 997, 1005-06, 114 S. Ct. 2647, 129 L. Ed. 2d 775 (1994).*

The *Rooker-Feldman* doctrine "prohibits a lower federal court [both] from considering claims actually decided by a state court, and claims inextricably intertwined **[**23]** with a prior state-court judgment." *Kenman Eng'g v. City of Union, 314 F.3d 468, 473 (10th Cir. 2002)* (internal citation and quotations omitted). n10 A claim is inextricably intertwined if "the state-court judgment *caused,* actually and proximately, the *injury* for which the federal-court plaintiff seeks *redress.*" *Id. at 476.* A federal case does not involve an "inextricably intertwined" state court judgment if the complaint challenges the constitutionality of the state law, so long as the state court did not address it and the plaintiff does not request the federal court to upset the state court judgment. *Id.*

> n10 The Supreme Court has recently begun narrowing the scope of the *Rooker-Feldman* doctrine. *See Exxon Mobil Corp., 544 U.S. at 292* (holding *Rooker-Feldman* inapplicable to parallel state and federal litigation); *and Lance v. Dennis, 126 S. Ct. 1198, 1202, 163 L. Ed. 2d 1059 (2006)* ("The *Rooker-Feldman* doctrine does not bar actions by nonparties to the earlier state-court judgment simply because, for purposes of preclusion law, they could be considered in privity with a party to the judgment.") *overruling in part, Kenman Eng'g, 314 F.3d at 481.* However, none of these limitations are applicable to this case.

[24]**

Here, the district court correctly concluded the *Rooker-Feldman* doctrine precluded Tal, Inc.'s condemnation claim in federal court. Oklahoma courts squarely considered and rejected Tal, Inc.'s claims that the initial condemnation order had been obtained through fraud on the part of the City, *City of Okla. City v. Tal Techs., Inc.*, and that the property was undervalued. *Tal I, 988 P.2d at 905* ("The property was appraised on three separate occasions by professional appraisers before it was sold. The trial court found and the record supports that the Urban Renewal Authority received fair market value for the property.").

All of Tal, Inc.'s attempts to avoid this result are unavailing. It is true that new allegations of fraud might create grounds for appeal, but that appeal should be brought in the state courts. *See Rooker v. Fidelity Trust Co., 263 U.S. 413, 415, 44 S. Ct. 149, 68 L. Ed. 362 (1923).* n11 Additionally, Tal, Inc. does not specifically raise new allegations of fraud but only contends the City itself continues to make false claims: "[i]n its 9/20/00 response to [Tal, Inc.'s] Appeal, the City filed an Answer Brief which contained numerous other **[**25]** **[*1257]** false and/or inaccurate factual representations, including, *continuation of its false initial assertion* that [Tal, Inc.'s] property was condemned for 'public use.'" (Corporate Br. at 7 (emphasis added).) Thus, the Oklahoma Civil Court of Appeals was confronted with and reviewed the same "fraud" as the trial court. Its holding is equally applicable to the "fraud" alleged at the trial court level (or "before the trial court") as it was to the "fraud" allegedly perpetrated before its very eyes. Moreover, and not withstanding Tal, Inc.'s disagreement, the Oklahoma courts' determination that "public use" includes economic development does not constitute fraud. *See Kelo v. City of New London, 125 S. Ct. 2655, 2665-66, 162 L. Ed. 2d 439 (2005)* (holding "public purpose" allows economic development by private parties if the development may lead to new jobs or increased tax revenue).

n11 In *Rooker*, the Court specifically stated that errors in state cases should be reviewed and settled through the state

appellate process.

> If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication.

Id.

[26]**

Tal's addition of new defendants in federal court also does not change the nature of the underlying state court ruling which upheld the validity of the condemnation. *Lavasek v. White, 339 F.2d 861, 863 (10th Cir. 1965).* n12 The state condemnation proceeding need not be final in order to serve as grounds for *Rooker-Feldman* preclusion. *Kenman Eng'g, 314 F.3d at 474.* n12 In *Lavasek*, we confronted a challenge to the condemnation of land by the State of New Mexico. There we held:

> The substance of the instant action is not changed by naming as defendants the present public officials and a county. The acts complained of are the outgrowth of a condemnation, judicially sanctioned, and remain the acts of the State of New Mexico through a complete privity of parties. Nor does appellants' claim of a denial of constitutional rights alter the situation.

Id.

Finally, Tal's challenge to the Renewal Authority's power of condemnation is irrelevant to the present **[**27]** case because the City, not the Renewal Authority, condemned the land. Even if the Oklahoma courts had ignored the allegedly critical differences between the condemnation powers of municipalities and urban renewal authorities, it would not eliminate *Rooker-Feldman* preclusion. The doctrine would mean nothing if it applied only when federal courts agreed with the state court holding. Tal, Inc. argued its case in the Oklahoma state courts and even raised grounds for post-judgment relief. Its failure in state court does not mean it can now seek to relitigate these issues in federal court. Just the opposite, a loss in state court precludes a second round in federal court.

III. Tal, Inc. and Bricktown, Inc.'s Sherman Act claims

Tal, Inc. and Bricktown, Inc. alleged the Developers and Douglas conspired to monopolize in violation of the Sherman Act. Specifically, Tal, Inc. and Bricktown, Inc. claimed Appellees engaged in "bid-rigging" which led to the award of the Bricktown redevelopment contract to the Developers. The district court dismissed Tal, Inc.'s claim for lack of standing and held Defendants were immune from liability for Bricktown, Inc.'s claim under *Parker v. Brown, 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1943),* **[**28]** and the *Noerr-Pennington* doctrine. n13

> n13 The *Noerr-Pennington* doctrine is drawn from the Supreme Court's opinions in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 81 S. Ct. 523, 5 L. Ed. 2d 464 (1961)* and *United Mine Workers of American v. Pennington, 381 U.S. 657, 85 S. Ct. 1585, 14 L. Ed. 2d 626 (1965).*

A. Tal, Inc.'s antitrust standing

Like Tal, Tal, Inc. must allege, *inter alia*, a cognizable

antitrust injury to establish standing. *Ashley Creek, 315 F.3d at 1254* . To establish an antitrust injury, a plaintiff "must allege a business **[*1258]** or property injury, an antitrust injury, as defined by the Sherman Act." *City of Chanute, 955 F.2d at 652*. The primary concern of the antitrust laws is the corruption of the competitive process, not the success or failure of a particular firm. *Brunswick Corp., 429 U.S. at 488* ("The antitrust laws . . . were enacted for the protection of competition not competitors.") (internal **[**29]** quotation omitted). Thus, when a company fails because of legitimate competitive forces, it is not entitled to recover under the antitrust laws. Additionally, "only buyers and sellers in the defendants' market are within the target of the antitrust laws." *Comet Mech. Contractors, Inc. v. E.A. Cowen Constr., Inc., 609 F.2d 404, 406 (10th Cir. 1980)*; *see Reibert v. Atlantic Richfield Co., 471 F.2d 727, 731 (10th Cir. 1973)*. This excludes secondary or remote injuries, such as those suffered by companies that desire to obtain a subcontract from a company injured by an antitrust violation. *Comet, 609 F.2d at 406-07*.

Tal, Inc. lacks standing because it did not suffer a cognizable antitrust injury. Tal, Inc. was not a buyer or seller in the affected market. Rather, Tal, Inc.'s allegation of an antitrust violation centers around the alleged "bid-rigging" between the Developers and Douglas which resulted in Bricktown, Inc.'s failure to receive the Bricktown redevelopment contract. Tal, Inc. claims it would have benefitted had Bricktown, Inc. received the redevelopment contract because Tal, Inc. would have received redevelopment subcontracts **[**30]** from Bricktown, Inc. and it owned land adjacent to Bricktown, Inc.'s proposed development area of Bricktown which would have increased in value had Bricktown, Inc.'s bid been accepted. This alleged injury, however, is insufficient to support Tal, Inc.'s antitrust claim. The fact Tal, Inc. could potentially benefit as a result of a derivative future business relationship with Bricktown, Inc. or through incidental and speculative increases in property value is insufficient to constitute an antitrust injury. *Comet, 609 F.2d at*

406-07. Accordingly, Tal, Inc. lacks standing to bring its antitrust claim.

B. The dismissal of Bricktown, Inc.'s Sherman Act claim against the Developers and Douglas

Bricktown, Inc. alleges both the Developers and Douglas engaged in a conspiracy to rig bids in violation of the antitrust laws in order to ensure the Developers were awarded the Bricktown redevelopment contract. The district court determined the Developers and Douglas were immune under the *Parker* and *Noerr-Pennington* immunity doctrines. It also questioned whether Bricktown, Inc. had adequately stated an antitrust claim.

1. *Parker* and *Noerr-Pennington* **[**31]** immunity doctrines

Bricktown, Inc. argues the *Parker* and *Noerr-Pennington* immunity doctrines are unavailable to Appellees because the Developers are private persons and Douglas was acting outside of her official duties. Additionally, it argues these immunity doctrines "do not apply when conspiracy to rig public bids are at issue." (Corporate Br. at 31.)

a. *Parker* immunity

Generally, a state's anticompetitive actions are immune from civil antitrust laws. *Parker v. Brown, 317 U.S. 341, 350-52, 63 S. Ct. 307, 87 L. Ed. 315 (1943)*. This federalism-based state immunity can, under certain circumstances, apply to municipalities. *Cmty. Commc'ns Co. v. City of Boulder, Colo., 455 U.S. 40, 51, 102 S. Ct. 835, 70 L. Ed. 2d 810 (1982)*. To be protected, a municipality must be "authorized by the State pursuant to state policy to displace competition with regulation **[*1259]** or monopoly public service." *Town of Hallie v. City of Eau Claire, 471 U.S. 34, 39, 105 S. Ct. 1713, 85 L. Ed. 2d 24 (1985)* (internal quotation omitted). This requires that the state legislature authorize the challenged action and intend to displace

competition with regulation. *Jacobs, Visconsi & Jacobs, Co. v. City of Lawrence, Kan., 927 F.2d 1111, 1120 (10th Cir. 1991).* **[**32]**

In this case, the State of Oklahoma authorized the creation of urban renewal authorities. *11 OKLA. STAT. TIT. § § 38-101 to -123.* The district court held that the authorizing statutes "clearly contemplate anticompetitive activity." (Appellants' App., Ex. 3 at 23.) In support, the district court cited 11 *OKLA. STAT. TIT. § 38-108(A)* which gives an urban renewal authority the power "[t]o undertake and carry out the urban renewal projects within its area of operation . . . and to make and execute contracts . . . necessary or convenient to the exercise of its powers under this article."

We agree with the district court's analysis. In an analogous case, *Buckley Construction, Inc. v. Shawnee Civic & Cultural Development Authority*, we upheld state immunity for a development authority that coordinated bidding under the Oklahoma Public Competitive Bidding Act of 1974, 61 *OKLA. STAT. TIT. § § 101-136* (1981). *933 F.2d 853, 856 (10th Cir. 1991).* We held the Competitive Bidding Act "clearly contemplates anticompetitive activity," in part because the statute "gives the public agency discretion to reject any or all bids if it determines that is in the best interest of the State **[**33]** of Oklahoma." *Id.* Like the Oklahoma Competitive Bidding Act at issue in *Buckley Construction*, the statute at issue in this case gives urban renewal authorities the discretion to make contracts "necessary or convenient to the exercise of its powers." This language has a foreseeable anticompetitive effect no less than the Competitive Bidding Act which was found to confer immunity in *Buckley Construction*. Thus, the Renewal Authority was not required to select the lowest bidder for the redevelopment contract if it was not "convenient to the exercise of its powers." Consequently, Douglas, as the executive director of the Renewal Authority, is entitled to *Parker* immunity, regardless of anticompetitive results or intent, assuming her actions were in furtherance of her Renewal Authority

responsibilities.

Bricktown, Inc. alleges Douglas was acting outside of her official responsibilities by engaging in "bid-rigging." However, no facts support Bricktown, Inc.'s claim, and there is no evidence Douglas had a personal interest in the contract being awarded to the Developers. Moreover, the city council approved her actions by adopting resolutions in support of the Developers' proposal. **[**34]** Bricktown, Inc.'s naked allegations of a "bid-rigging" conspiracy do not render Douglas' actions outside of her official duties and thus do not deprive her of immunity.

b. *Noerr-Pennington* immunity

A corollary of *Parker* immunity is the *Noerr-Pennington* doctrine, which "exempts from antitrust liability any legitimate use of the political process by private individuals, even if their intent is to eliminate competition." *Zimomra v. Alamo Rent-A-Car, Inc., 111 F.3d 1495, 1503 (10th Cir. 1997); see also City* **[*1260]** *of Columbia v. Omni Outdoor Adver., Inc., 499 U.S. 365, 379-80, 111 S. Ct. 1344, 113 L. Ed. 2d 382 (1991).* The doctrine is grounded in the *First Amendment* and "arises from the [Supreme] Court's conclusion that the Sherman Act was not intended to derogate the *First Amendment* right of citizens to petition the government for a redress of grievances." *GF Gaming Corp., 405 F.3d at 883.* The actual intent of the parties petitioning the government or of the government agent involved is irrelevant. *City of Columbia, 499 U.S. at 380; Zimomra, 111 F.3d at 1503.*

Of course, this immunity does not encompass fraudulent **[**35]** or illegal actions. *Oberndorf v. City & County of Denver, 900 F.2d 1434, 1440 (10th Cir. 1990).* But, to establish fraud or illegality, there must be more than a mere allegation of a "conspiracy." *City of Columbia, 499 U.S. at 383.* "[C]ultivating close ties with government officials is the essence of lobbying." *Boone v. Redevelopment Agency of the City of San Jose, 841 F.2d 886, 894 (9th Cir. 1988).* "It would be unlikely that any effort to influence legislative action could succeed

unless one or more members of the legislative body became . . . co-conspirators in *some* sense with the private party urging such action." *City of Columbia, 499 U.S. at 383.* Therefore, "[f]or purposes of *Noerr-Pennington*, there is no distinction between petitioning government officials and conspiring with them." *GF Gaming Corp., 405 F.3d at 883.*

Bricktown, Inc. argues the Developers are not entitled to *Noerr-Pennington* immunity because they are private entities and because *Noerr-Pennington* immunity does not apply when a "conspiracy to rig public bids [is] at issue." (Corporate Br. at 31.) However, Bricktown, **[**36]** Inc. is clearly wrong that the *Noerr-Pennington* doctrine does not apply to private entities; that is precisely for whom the immunity was created. *Zimomra, 111 F.3d at 1503.* Nor does the fact the alleged antitrust violation is a "bid-rigging" claim automatically remove it from *Noerr-Pennington* immunity. n14 The Developers, even though potentially acting with anticompetitive intent, are covered under the *Noerr-Pennington* doctrine unless there is some colorable claim of fraud or illegality. In this case, there is only an allegation the Developers participated in an abstract "bid-rigging conspiracy." Bricktown, Inc. does not proffer any facts that, if credited, would support the charge of conspiracy or indicate any fraudulent behavior on the part of the Developers or Douglas. Bricktown, Inc.'s only specific factual allegations are that the Developers "made two out of the five Urban Renewal's Commissioner[s] partners in a number of business ventures; managed an office building of a third Commissioner below market value; and similarly, [were] the landlord[s] of Urban Renewal and leased it office space in one [of] the Hogan Team's downtown buildings below **[**37]** market value." (Corporate Br. at 37.)

n14 Perhaps Bricktown, Inc. believes immunity is unavailable because "bid-rigging" has been held a *per se* violation of *Section 1* of the Sherman Act. *United States v. Flom, 558 F.2d 1179, 1183 (5th Cir. 1977); United*

States v. Finis P. Ernest, Inc., 509 F.2d 1256, 1261 (7th Cir. 1975). But a *per se* violation only means that *if* the Developers are found to be guilty of the complained conduct, they can offer no business justification, not that they cannot assert immunity.

According to the Developers, Bricktown, Inc. is merely complaining that they "vigorously petitioned [the Renewal Authority] to consider [their] proposal for the development of South Bricktown, lobbied the city council in promotion of [their] development proposal, lobbied the city council to adopt the resolutions that would be necessary to implement that proposal, and made legal campaign contributions." (Developers' Br. at 31.) We agree and reject Bricktown, **[**38]** Inc.'s challenge to the district court's application of *Noerr-Pennington* immunity.

2. Failure to adequately plead an antitrust violation

Even if the Developers and Douglas were not immune under *Parker* and **[*1261]** *Noerr-Pennington*, Bricktown, Inc. failed to allege sufficient facts to support its antitrust claim. Bricktown, Inc. alleges it adequately plead an antitrust violation because it "clearly alleged that the Defendants engaged in a conspiracy scheme of bid-rigging (pre-determined before publication of bid), and that the submission of TMK/Hogan's RFP Proposal was collusive, fabricated, and non-competitive." (Corporate Br. at 31.)

"A complaint is subject to dismissal where it does little more than recite the relevant antitrust laws." *TV Commc'ns Network, Inc. v. Turner Network Television, Inc., 964 F.2d 1022, 1027 (10th Cir. 1992)* (internal quotation omitted). Conclusory allegations are insufficient. *Id. at 1024.* Bare bones accusations of a conspiracy without any supporting facts are insufficient to state an antitrust claim. *Mountain View Pharmacy v. Abbott Labs., 630 F.2d 1383, 1388 (10th Cir. 1980).* Moreover, "[t]he **[**39]** use of antitrust 'buzz words' does not supply the factual circumstances necessary to support . . . conclusory allegations."

TV Commc'ns, 964 F.2d at 1026.

Bid-rigging has been found to violate *Section 1* of the Sherman Act when two or more competitors coordinate their bids to a third party. *United States v. Mobile Materials, Inc., 881 F.2d 866, 869 (10th Cir. 1989)*. However, Bricktown, Inc.'s bid-rigging antitrust claim suffers from the lack of factual support. n15 Its bald allegations of "conspiracy" and "bid-rigging" are insufficient to support an antitrust claim and are no better than claiming that the defendants violated "the antitrust laws" in the abstract. Indeed, Douglas had no economic interest in the Developers receiving the bid as she was not a competitor or owner, nor was there any evidence of bribery. At best, the conduct complained of includes the Developers' zealous lobbying of the city council to approve their proposed renovation plan. This conduct does not constitute collusion among competitors to fix a bid price, nor is there anything illegal about lobbying. Absent specific factual allegations that support a claim of bid-rigging, **[**40]** Bricktown, Inc.'s use of antitrust buzz-words and parroting of general antitrust theories is insufficient to support a Sherman Act violation.

> n15 An additional problem with Bricktown, Inc.'s claim is that the alleged bid-rigging involved Douglas who was a third party, and not a competitor. A traditional bid-rigging claim involves collusion among competitors *against* the third party who requested the bid. *See Mobile Materials, 881 F.2d at 869.*

IV. Tal, Inc. and Bricktown, Inc.'s Rico Claims

As stated previously, Tal, Inc. and Bricktown, Inc. brought RICO claims against the Developers under *18 U.S.C. § 1962(b)*, against Douglas under *18 U.S.C. § 1962(c)* and against the Developers and Douglas under *18 U.S.C. § 1962(d)*. The elements of a civil RICO claim are (1) investment in, control of, or conduct of (2) an enterprise (3) through a pattern (4) of racketeering activity. *18 U.S.C. § 1962(a)* **[**41]** *, (b), & (c).*

n16 "Racketeering activity" is defined in *18 U.S.C. § 1961(1)(B)* as any "act which is indictable" under federal law and specifically includes mail fraud, wire fraud and racketeering. These underlying acts are "referred to as predicate acts, because they form the basis for liability under RICO." *BancOklahoma Mortgage Corp. v. Capital Title Co., 194 F.3d 1089, 1102 (10th Cir. 1999)* (internal quotation omitted). "[A] **[*1262]** person does not have to be formally convicted of any predicate act before liability under *18 U.S.C. § 1962*[] may attach." n17 *Id.*

> n16 Under *18 U.S.C. § 1964(c)*, persons injured in their business or property by reason of a violation of *§ 1962* may bring a RICO claim and recover treble. damages, costs and attorney's fees.

> n17 The Developers urge this Court to require an indictability standard in the pleadings. The district court of Utah has required a plaintiff to show "that a party has committed at least two indictable acts." *Bache Halsey Stuart Shields, Inc., v. Tracy Collins Bank & Trust Co., 558 F. Supp. 1042, 1045 (D. Utah 1983)* (internal quotation omitted). Thus, "a party must allege two acts of 'racketeering' with enough specificity to show there is probable cause the crimes were committed. An offense is not 'indictable' merely because it is alleged. Rather, to be indictable it must be 'well-founded' and based on probable cause." *Id.* This pleading standard, however, has never been adopted by this Court and has been expressly rejected by the seventh circuit. *Haroco, Inc. v. Am. Nat'l. Bank & Trust Co. of Chicago, 747 F.2d 384, 403-04 (7th Cir. 1984).* Although such a standard would make this case easier to dispose of, a heightened pleading requirement is not necessary to affirm the district court's ruling, and we decline to consider it here.

[42]**

In the Second Amended Complaint and RICO Case Statement, n18 Bricktown, Inc. and Tal, Inc. alleged the Developers and Douglas engaged in predicate acts of mail fraud in violation of *18 U.S.C. § 1341*, wire fraud in violation of *18 U.S.C. § 1343* and bribery in violation of *18 U.S.C. § 201*. n19 Specifically, Bricktown, Inc. and Tal, Inc. allege the Developers fraudulently procured the Bricktown redevelopment contract by misrepresenting to the Renewal Authority and the city council that they were backed by Torchmark Corporation. They also allege the Developers "acquired or maintained . . . interest in or control over" the Renewal Authority and the city council through bribery. (Appellants' App., Ex. 1 at 58.) The district court dismissed the subsection (b) claim against the Developers for failure to specifically allege predicate acts and failure to show an interest in or control over the Renewal Authority or the city council. It dismissed the subsection (c) claim against Douglas for failure to specifically allege predicate acts and failure to show a continuing threat to other parties from the alleged RICO activities. **[**43]** The district court also dismissed the subsection (d) claim against the Developers and Douglas for failing to **[*1263]** sufficiently allege a predicate violation of *subsections (b)* or *(c)*. Because *subsections (b)* and *(c)* both require allegations of racketeering activity, we first determine whether Bricktown, Inc. and Tal, Inc. sufficiently alleged predicate acts that can serve as a basis for RICO liability.

n18 When evaluating the sufficiency of pleadings under *Rule 12(b)(6) of the Federal Rules of Civil Procedure*, we may consider the allegations made in a plaintiff's RICO Case Statement in conjunction with the complaint. *See Fox v. Maulding, 112 F.3d 453, 460 (10th Cir. 1997)*.

n19 Bricktown, Inc. and Tal, Inc. also argue the City's allegedly fraudulent condemnation of Tal, Inc.'s land constitutes a predicate act for purposes of RICO, relying on *Pelfresne v. Stephens, 35 F. Supp. 2d 1064 (N.D. Ill.*

1999). However in this case, unlike in *Pelfresne*, we are confronted with a state court determination that the condemnation of Tal, Inc.'s land was proper and are barred by the *Rooker-Feldman* doctrine from reconsidering this determination on its merits. We cannot consider the condemnation as a possible predicate act without calling into question the validity of the state court judgment. Thus, Tal, Inc.'s allegation that the condemnation was fraudulent and constituted a predicate act for RICO purposes is inextricably intertwined with the state court judgment and precluded by *Rooker-Feldman*. *See Kenmen Eng'g, 314 F.3d at 473* (precluding claims inextricably intertwined with state court case); *Fox, 112 F.3d at 460* (excluding RICO claim barred by failure to raise issue in state court). As to Bricktown, Inc.'s use of the condemnation claim as a predicate act, it also fails because the City, which was responsible for the condemnation, is not a named defendant but is the alleged "enterprise." The defendant must be separate from the enterprise. *See Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158, 161-63, 121 S. Ct. 2087, 150 L. Ed. 2d 198 (2001)*; *Brannon v. Boatmen's First Nat'l Bank of Okla., 153 F.3d 1144, 1146 (10th Cir. 1998)*; *Bd. of County Comm'rs of San Juan County v. Liberty Group, 965 F.2d 879, 885 (10th Cir. 1992)*. This is true even if we credited Plaintiffs' statement that the Renewal Authority was also involved in the fraudulent condemnation.

[44]**

A. Pattern of racketeering activity

Plaintiffs allege Defendants engaged in predicate acts of mail fraud, wire fraud and bribery. To establish the predicate act of mail fraud, Bricktown, Inc. and Tal, Inc. must allege "(1) the existence of a scheme or artifice to defraud or obtain money or property by false pretenses, representations or promises, and (2) use of the United States mails for the purpose of executing the

scheme." *Bacchus Indus., Inc. v. Arvin Indus., Inc., 939 F.2d 887, 892 (10th Cir. 1991). See United States v. Kennedy, 64 F.3d 1465, 1475 (10th Cir. 1995).* "The elements of wire fraud are very similar, but require that the defendant use interstate wire, radio or television communications in furtherance of the scheme to defraud." *BancOklahoma Mortgage Corp., 194 F.3d at 1102* (internal quotation omitted).

> [T]he common thread among . . . these crimes is the concept of "fraud." Actionable fraud consists of (1) a representation; (2) that is false; (3) that is material; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) the speaker's intent it be acted on; (6) the hearer's ignorance **[**45]** of the falsity of the representation; (7) the hearer's reliance; (8) the hearer's right to rely on it; and (9) injury.

Id. at 1103. Failure to adequately allege any one of the nine elements is fatal to the fraud claim.

The particularity requirement of *Rule 9(b), Federal Rules of Civil Procedure*, applies to claims of mail and wire fraud. n20 *Robbins v. Wilkie, 300 F.3d 1208, 1211 (10th Cir. 2002); Farlow v. Peat, Marwick, Mitchell & Co., 956 F.2d 982, 989-90 (10th Cir. 1992); Cayman Exploration Corp. v. United Gas Pipe Line Co., 873 F.2d 1357, 1362 (10th Cir. 1989).* Thus, "a complaint alleging fraud [must] 'set forth the time, place and contents of the false representation, the identity of the party making the false statements and the consequences thereof.'" *Koch v. Koch Indus., 203 F.3d 1202, 1236 (10th Cir. 2000)* (quoting *Lawrence Nat'l Bank v. Edmonds (In re Edmonds), 924 F.2d 176, 180 (10th Cir. 1991)).* A plaintiff asserting "fraud must also identify the purpose of the mailing within the defendant's fraudulent scheme." *McLaughlin v. Anderson, 962 F.2d 187, 191 (2d Cir. 1992).* **[**46]**

> n20 "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally." *FED. R. CIV. P. 9(b).*

The federal anti-bribery statute, *18 U.S.C. § 201(b)*, requires the bribes to be directed toward "public official[s]" or "person[s] . . . selected to be a public official" within the meaning of *18 U.S.C. § 201(a)*. n21 *Section 201(a)* generally limits application of the federal bribery statute to federal officials or persons "acting for or on behalf of the United States, or any department, agency or branch of Government thereof . . . ." *18 U.S.C. § 201(a)(1).*

> To determine whether any particular individual falls within this category, the proper inquiry is not simply whether the person had signed a contract with the **[*1264]** United States or agreed to serve as the Government's **[**47]** agent, but rather whether the person occupies a position of public trust with official federal responsibilities. Persons who hold such positions are public officials within the meaning of *section 201* and liable for prosecution under the federal bribery statute.

Dixson v. United States, 465 U.S. 482, 496, 104 S. Ct. 1172, 79 L. Ed. 2d 458 (1984). The federal anti-bribery law also applies to bribes offered to state and local officials if the "organization, government, or agency receives in any one year period, benefits in excess of $ 10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance." *18 U.S.C. § 666(b).*

> n21 *18 U.S.C. § 201(a)(2)* provides that "the term 'person who has been selected to be a public official' means any person who has been nominated or appointed

> to be a public official, or has been officially informed that such person will be so nominated or appointed. . . ."

Bricktown, **[**48]** Inc. and Tal, Inc. set forth their allegations of predicate acts in Section X of their Second Amended Complaint. In support of their mail fraud allegation, Bricktown, Inc. and Tal, Inc. listed forty-six letters with descriptions of the parties, dates and general statements concerning the title or contents of the letters. Tal, Inc. and Bricktown, Inc.'s allegations of mail fraud center around the alleged "Torchmark misrepresentation."

The "Torchmark misrepresentation" consists of TMK/Hogan's alleged intentional misrepresentation to the Renewal Authority and the city council during the bidding process that it "was backed by the $ 11 billion Torchmark Corporation," (Appellants' App., Ex. 2 at 2), which Tal, Inc. and Bricktown, Inc. allege "was a major factor in [its] selection as [a] developer for the project, and in Plaintiffs' failure to be selected as [the] developer . . . ." (*Id.*, Ex. 1 at 29.) Tal, Inc. and Bricktown, Inc. alleged that Stonegate, not Torchmark was "the true 50% partner [with] Defendant Hogan Property in Defendant TMK/Hogan." (*Id.*, Ex. 2 at 3.) In other words, "Defendants' Torchmark Misrepresentation stated that Defendant TMK/Hogan is a 50/50 joint **[**49]** venture between Defendant Hogan Property and Torchmark Development Corporation, and not between Defendant Hogan Property and Defendant Stonegate, as the official Oklahoma Secretary of State's record shows." n22 (*Id.* at 5.)

> n22 Stonegate refers to Stonegate Management Company, LLC.

In support of their "Torchmark misrepresentation" claim, Tal, Inc. and Bricktown, Inc. alleged Hogan sent a letter to the Renewal Authority on July 26, 1996, detailing TMK/Hogan's qualifications and financial responsibility which included a statement that "Defendant TMK/Hogan's 50% partner was

Defendant TDC, identified by Defendants therein as 'a wholly owned subsidiary' of Torchmark." (*Id.*, Ex. 1 at 14-15.) Tal, Inc. and Bricktown, Inc. also alleged Hogan and Elgin mailed various financial documents detailing information about Torchmark on several occasions. n23 This material itself is not alleged to have been false, but rather was used in support of the initial misrepresentation.

> n23 These primarily included Torchmark's 1995 through 1998 10-K Annual Report and Financial Statements. (*Id.* at 47-48.)

[50]**

In the district court, the Developers argued Stonegate was a wholly owned subsidiary of Torchmark. In support, they cited to the public records of the Alabama Secretary of State which allegedly show that Torchmark formed TDC on June 10, 1988, and was subsequently merged into TDC Company, LLC, on November 24, 1999. Further, they argued that Oklahoma County Clerk records indicated that TDC and Hogan Property Management filed a Fictitious Name Certificate on January 12, 1996, which stated that those entities "associated themselves as partners under the name of TMK/ Hogan Joint Venture." n24 (Appellees' Supp. App. Vol IV **[*1265]** at 0966 (internal quotation omitted).) The Developers also alleged that TDC assigned its interest in TMK/Hogan in November 1996 to its wholly-owned subsidiary Stonegate Management Corporation which was then merged into Stonegate Management Company, LLC.

> n24 Exhibits attached to a complaint are properly treated as part of the pleadings for purposes of ruling on a motion to dismiss. *Indus. Constructors Corp. v. United States Bureau of Reclamation, 15 F.3d 963, 964-65 (10th Cir. 1994)*. Ordinarily, consideration of material attached to a defendant's answer or motion to dismiss requires the court to convert the motion into one for summary

judgment and afford the parties notice and an opportunity to present relevant evidence. *FED. R. CIV. P. 12(b)*; *David v. City & County of Denver, 101 F.3d 1344, 1352 (10th Cir. 1996)*. However, facts subject to judicial notice may be considered in a *Rule 12(b)(6)* motion without converting the motion to dismiss into a motion for summary judgment. *See Grynberg v. Koch Gateway Pipeline Co., 390 F.3d 1276, 1278 n.1 (10th Cir. 2004)* (citing 27A Fed. Proc., L. Ed. § 62:520 (2003)). This allows the court to "take judicial notice of its own files and records, as well as facts which are a matter of public record." *Van Woudenberg ex rel. Foor v. Gibson, 211 F.3d 560, 568 (10th Cir. 2000), abrogated on other grounds by McGregor v. Gibson, 248 F.3d 946, 955 (10th Cir. 2001)*. However, "[t]he documents may only be considered to show their contents, not to prove the truth of matters asserted therein." *Oxford Asset Mgmt., Ltd v. Jaharis, 297 F.3d 1182, 1188 (11th Cir. 2002)*.

[51]**

The Second Amended Complaint acknowledged that Stonegate Management Company was formed on November 22, 1999, and Stonegate Management Corporation was merged into it on November 24, 1999. It also alleged TDC Company, LLC, was created on November 22, 1999, and merged with Torchmark Development Corporation on November 24, 1999. But the complaint specifically alleged there was no affiliation between Stonegate and Torchmark Development. n25 According to Tal, Inc. and Bricktown, Inc., the purpose of the separate creation and mergers of Torchmark Development Corporation, Torchmark Development Company, Stonegate Management Corporation and Stonegate Management Company was to "retroactively cover up and conceal [the] Torchmark Misrepresentation . . . by representing that Defendant Elgin Development is the owner of Defendant TDC and that TDC wholly owns Defendant Stonegate." (Appellants' App., Ex. 2 at

3.)

> n25 According to the Second Amended Complaint, "TMK/Hogan's two partners, as of 1996, were Defendants Hogan Property and Stonegate, and not . . . any entity affiliated with Torchmark." (*Id.* at 15.)

[52]**

The district court's order did not specifically address the "Torchmark misrepresentation." Rather, it found that none of the alleged mail communications sufficiently pled fraud with particularity. We disagree. The details of the "Torchmark misrepresentation" alleged in the Second Amended Complaint coupled with the documents listed in support of that claim sufficiently satisfy *Rule 9(b)*'s requirements. Tal, Inc. and Bricktown, Inc. identified the parties, the dates, the content of the communications, how they were allegedly fraudulent and how they furthered the fraudulent enterprise. Although the Developers' argument that Stonegate is a wholly owned subsidiary of Torchmark may be fully borne out by the public records of Alabama and Oklahoma, we decline to consider these materials. n26 *Rule 12(b)(6)* **[*1266]** motions to dismiss are not designed to weigh evidence or consider the truth or falsity of an adequately pled complaint. *Sutton, 173 F.3d at 1236.* This is especially controlling in the face of a direct claim to the contrary in the complaint and in the absence of a ruling on the issue from the district court. Thus, Tal, Inc. and Bricktown, Inc. sufficiently alleged an act **[**53]** of mail fraud based on the alleged "Torchmark misrepresentation."

> n26 Even assuming that Stonegate is a wholly owned subsidiary of Torchmark, that fact does not necessarily foreclose a claim of misrepresentation. Tal, Inc. and Bricktown, Inc. might still have a claim if the bid submitted to the Renewal Authority by the Developers claimed Torchmark was a partner in TMK/Hogan, when in fact Stonegate, a wholly owned subsidiary of Torchmark, was Hogan's partner at the time of the bid.

> Whether the listing of a parent of a wholly owned subsidiary as a partner in a development company, rather than the actual subsidiary partner, in a bid constitutes misrepresentation is an issue we decline to address.

In addition, we agree with the district court that the May 18, 1998 letter authored by Mr. Tolbert, which was allegedly caused to be mailed by the Developers, satisfies the requirements of *Rule 9(b)*. This letter allegedly supported TMK-Hogan's earlier fraudulent statement on July 17, 1997-- that the Bricktown Association **[**54]** was a partner with TMK/Hogan. (Appellants' App., Ex. 1 at 36-37.) Like the "Torchmark misrepresentation," this allegedly false statement was designed to increase the appeal of TMK/Hogan as a developer and help it secure the award of the development contract.

As to the remaining letters, we again agree with the district court that they "appear to be innocuous business communications." (Appellants' App., Ex. 3 at 13.) While the Second Amended Complaint references these letters their fraudulent nature is not apparent on their face. This is especially problematic because Tal, Inc. and Bricktown, Inc. not only failed to allege how these communications were fraudulent but also how they specifically furthered the fraudulent enterprise. Moreover, eighteen of the forty-six exchanges occurred after July 21, 1998, the date the contract was awarded to the Developers. Thus, the eighteen post-award letters were at best concealment and could not have been used "for the purpose of executing the scheme." *See Kann v. United States, 323 U.S. 88, 94-95, 65 S. Ct. 148, 89 L. Ed. 88 (1944)*; *United States v. Cardall, 885 F.2d 656, 680-82 (10th Cir. 1989)*. Therefore, Bricktown, Inc. and **[**55]** Tal, Inc.'s allegations of mail fraud as a predicate act are limited to the documents involving the Torchmark and Bricktown Association misrepresentations.

In support of their wire fraud allegation, Bricktown, Inc. and Tal, Inc. list twenty-seven telephone calls, emails, faxes and cable broadcasts involving Appellees and the process granting

the development contract to the Developers. All but three of the electronic transmissions relied upon suffer from the same problems as the majority of the communications supporting the mail fraud claim. Only three were alleged with sufficient particularity to establish cognizable claims for wire fraud: (1) the August 1, 1997 submission by Douglas to the city council of a fax sent to Douglas by TMK/Hogan, (Appellants' App., Ex. 1 at 32-33); (2) the August 5, 1997 broadcast of the city council meeting where Douglas allegedly made an intentionally fraudulent statement about her role in the selection process, (*Id* at 33, 53); and (3) telephone conversations occurring between May 11, 1998, and May 18, 1999, between Hogan, Elgin and Douglas and Mr. Tolbert, the president of the Bricktown Association. (*Id.* at 36, 54.) Unlike the other twenty-four **[**56]** wire communications alleged (and the forty-six letters), these three communications not only describe the date, the parties to the communication and the subject matter, but also how they were fraudulent and what they were designed to accomplish. Thus, Bricktown, Inc. and Tal, Inc. adequately alleged three acts of mail fraud in violation of *18 U.S.C. § 1343.*

In support of their bribery claim under *18 U.S.C. § 201*, Bricktown, Inc. and Tal, Inc. list ten actions by both the Developers and members of the Renewal Authority, including Douglas, that arguably benefitted **[*1267]** each other. n27 However, Douglas, the Renewal Authority Commissioners and the city council are all municipal state actors with no ties to federal programs apparent from the pleadings. This is fatal to Bricktown, Inc. and Tal, Inc.'s bribery claim because they fail to adequately allege that the relevant parties are "public officials" or acting on behalf of the federal government under *18 U.S.C. § 201(a)* or *§ 666*. Bricktown, Inc. and Tal, Inc. conceded to the district court that they could not state a claim against Douglas under the **[**57]** federal anti-bribery statute but argued she violated a state anti-bribery statute. n28 While violations of state bribery laws can serve as predicate acts under RICO, *see United States v. Welch, 327 F.3d 1081 (10th Cir. 2003)*, the plaintiffs

failed to plead that Douglas had violated a state anti-bribery statute in either their RICO Case Statement or their Second Amended Complaint. Additionally, as noted by the district court, Bricktown, Inc. and Tal, Inc. never requested leave to amend their complaint in order to allege a violation of a state anti-bribery statute. (Appellants' App., Ex. 3 at 14.)

> n27 Included in these acts are: (1) the renting of office space to the Renewal Authority at below-market rates; (2) bribing Renewal Authority Commissioner Hall by making him a 50% partner in an East Wharf development project; (3) bribing Renewal Authority Commissioner Nichols by offering the Mid-American Tower at below-market rates; (4) securing Commissioner Talbot a position on the Myriad Garden Trust and the Renewal Authority; (5) bribing Councilman Liebmann by contributing to a political fundraiser which led to his appointment to political positions with various City trusts; and (6) bribing Mayor Humphreys.

[58]**

n28 Specifically, they allege Douglas violated 21 *OKLA. STAT. TIT. § 381* which makes it a felony to:

> > give[], offer[], or promise[] to any executive, legislative, county, municipal, judicial, or other public officer, or any employee of the State of Oklahoma or any political subdivision thereof, . . . any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision, or judgment on any matter, question, cause, or proceeding which then may be pending, or may by law come or be brought before him in his official capacity . . . .

Bricktown, Inc. and Tal, Inc.'s belated request on appeal that "if the Court finds that some of the allegations stated in the

almost 300 paragraphs and sub-paragraphs are not too clear, at the least, the Court should point to the unclear allegations and permit the Appellants to amend and clarify these issues," comes too late to offer escape from an adverse *Rule 12(b)(6)* order. (Corporate Br. at 43.) Bricktown, Inc. and Tal, Inc. could and should have sought leave to amend their Second Amended Complaint with the district court, not **[**59]** with this Court on appeal. *See The Tool Box, Inc. v. Ogden City Corp., 419 F.3d 1084, 1088 (10th Cir. 2005)* ("Courts have refused to allow a postjudgment amendment when, as here, the moving party had an opportunity to seek the amendment before entry of judgment but waited until after judgment before requesting leave.") Thus the only allegations sufficient to support a claim of a predicate act are the letters involving the Torchmark and Bricktown Association misrepresentations and the three wire communications which allege Douglas, Hogan and Elgin engaged in wire fraud.

As a final point, we question whether Plaintiffs' allegations of predicate acts satisfied the requirement of "a *pattern* of racketeering activity." A "pattern" of racketeering is defined as "at least two acts of racketeering activity, . . . which occurred within ten years" of each other. *18 U.S.C. § 1961(5)*. However, because "RICO is not aimed at the isolated offender," *Resolution Trust Corp., 998 F.2d at 1544*, proof of two or more predicate acts **[*1268]** are not sufficient to prove a pattern unless there is a relationship between the predicate acts and a threat of **[**60]** continuing activity. *H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 239, 109 S. Ct. 2893, 106 L. Ed. 2d 195 (1989)*; *Duran v. Carris, 238 F.3d 1268, 1271 (10th Cir. 2001)*. Continuity of threat requires both proof of "a series of related predicates extending over a substantial period of time," as well as a "showing that the predicates themselves involve a distinct threat of long-term racketeering activity . . . or that the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise." *Resolution Trust Corp., 998 F.2d at 1543*. To determine continuity we examine both the

duration of the related predicate acts and the extensiveness of the RICO enterprise's scheme. *Id.* In determining the extensiveness of the predicate acts we consider a variety of factors as well as "external facts that are not necessarily charged as predicate acts." *Id. at 1544.*

Here, none of the Appellants specifically allege a continuing threat by the Developers and Douglas to control the Renewal Authority and the city council. The allegations are confined to the award of one, albeit large, development contract **[**61]** to the Developers. There is no reason to believe that the grant of one development contract acquired through misrepresentation of financial backing and partnership constitutes "a distinct threat of long-term racketeering activity." *Id. at 1543.* In theory, we could consider material outside of the alleged predicate acts to find a more extensive threat to the Renewal Authority and the city council. *Id. at 1544.* However, because the extensiveness of the threat is a question of fact, *id.*, we will assume for the purposes of this opinion that the predicate acts alleged by Bricktown, Inc. and Tal, Inc. establish a pattern of racketeering activity. We next consider whether the pattern of racketeering activity states a claim under *18 U.S.C. § 1962(b), (c),* or *(d).*

B. *Section 1962(b)*

18 U.S.C. § 1962(b) makes it illegal for "any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in . . . interstate . . . commerce." The purpose of the statute is "to prohibit **[**62]** efforts to muscle in on legitimate business through the commission of a pattern of racketeering activity." SMITH & REED, CIVIL RICO, P6.04[5][b]. To state a claim under *section 1962(b),* the plaintiff must allege the defendant (1) acquired or maintained an interest in or control of (2) an enterprise engaged in interstate commerce (3) through a pattern (4) of racketeering activity, or collection of an unlawful debt. *See Sowell v. Butcher & Singer, Inc., 926 F.2d 289, 296 (3d Cir.*

1991). As with other *section 1962* claims, the injury must be attributable to the prohibited action. *Danielsen v. Burnside-Ott Aviation Training Ctr., Inc., 291 U.S. App. D.C. 303, 941 F.2d 1220, 1231 (D.C. Cir. 1991)*.

Section 1962(b) claims are relatively uncommon because the first element requires sufficient allegations of "an interest in or control of" an enterprise, as opposed to the less demanding requirement of "association" with the enterprise in *section 1962(c)* claims. "Interest in or control of" requires more than a general interest in the results of its actions, or the ability to influence the enterprise through deceit. *See Univ. of Maryland at Baltimore v. Peat, Marwick, Main & Co., 996 F.2d 1534, 1539-40 (3d Cir. 1993)* **[**63]** (allegedly preparing false financial statements on behalf of the enterprise is not participation). Rather, it requires some ownership of the **[*1269]** enterprise or an ability to exercise dominion over it. n29

n29 *See United States v. Jacobson, 691 F.2d 110, 113 (2d Cir. 1982)* ("'interest' in fact encompasses all 'property rights' in a business enterprise" for purposes of *§ 1962(b)*); *United States v. Martino, 681 F.2d 952, 954 (5th Cir. 1982)* (en banc) (participation in the advantage, profit and responsibility of the enterprise is an "interest"); *Moffatt Enters., Inc. v. Borden Inc., 763 F. Supp. 143, 147 (W.D. Pa. 1990)* ("it is clear that the 'interest' contemplated in . . . *§ 1962(b)* is in the nature of a proprietary one, such as the acquisition of stock, and that the 'control' contemplated is in the nature of the control one gains through the acquisition of sufficient stock to affect the composition of a board of directors."). *But see, Ikuno v. Yip, 912 F.2d 306, 310 (9th Cir. 1990)* ("control within the meaning of *§ 1962(b)* need not be formal control and 'need not be the kind of control that is obtained, for example, by acquiring a majority of the stock of a corporation.'") (quoting *Sutliff, Inc. v. Donovan*

Cos., 727 F.2d 648, 653 (7th Cir. 1984)).

[64]**

Bricktown, Inc. and Tal, Inc.'s claims founder on the combination of elements (1) and (4). They failed to adequately allege Appellees acquired or maintained an interest in or control of the Renewal Authority or the city council *through* the predicate acts. Bricktown, Inc. and Tal, Inc.'s alleged three acts of wire fraud fall short of demonstrating control of or an interest in the Renewal Authority and the city council; at best they show a misrepresentation to those bodies. Perhaps the allegations of bribery might have been sufficient to demonstrate an interest in or control of the Renewal Authority or the city council, n30 if they had been adequately plead. But in the absence of sufficient allegations of bribery, Bricktown, Inc. and Tal, Inc. did not adequately allege the defendants acquired or maintained an interest in or control of the Renewal Authority or the city council based on the three alleged acts of wire fraud.

n30 *But see In re Am. Honda Motor Co., Inc. Dealerships Relations Litigation, 941 F. Supp. 528, 556 (D. Md. 1996)* (holding bribery fails to establish investment in or acquiring interest in an enterprise for RICO purposes).

[65]**

C. Section 1962(c):

18 U.S.C. § 1962(c) makes it illegal "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . ." To survive a *Rule 12(b)(6)* motion, a civil RICO claim must allege the defendants (1) participated in the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Cayman Exploration Corp., 873 F.2d at 1362*; *see Sedima,*

S.P.R.L., 473 U.S.at 496. The Supreme Court has adopted the "operation or management" test to determine whether the defendant has conducted or participated in the conduct of the enterprise by having some part in directing the affairs of the enterprise. *Reves v. Ernst & Young, 507 U.S. 170, 179, 113 S. Ct. 1163, 122 L. Ed. 2d 525 (1993).* "For liability to be imposed under that test, the defendants must have participated in the operation or management of the RICO enterprise," *BancOklahoma Mortgage Corp., 194 F.3d at 1100,* "although it is not **[**66]** necessary for the participant to have significant control." *Resolution Trust Corp., 998 F.2d at 1541* (internal quotation omitted).

In this case, Bricktown, Inc. and Tal, Inc. have failed to allege sufficient predicate acts to establish Appellees participated in the operation or management of the Renewal Authority or the city council. All the alleged predicate acts relate to TMK/Hogan's bid for the award of the Bricktown development contract, and at **[*1270]** most involve an attempt to influence the Renewal Authority and the city council through misrepresentations, not through operation or management. Misrepresenting material facts to influence a selection process is a serious allegation to be sure, but does not rise to the level of participation in the operation or management of the Renewal Authority and the city council. Again, had Appellants adequately alleged Douglas was involved in any of the predicate acts, this would be a different case, as it would be if the Appellants had adequately alleged bribery. *See Resolution Trust Corp., 998 F.2d at 1542* (holding chief executive officer of the enterprise participated in the conduct of the enterprise); *Reves, 507 U.S. at 184* **[**67]** (noting "[a]n enterprise also might be operated or managed by others associated with the enterprise who exert control over it . . . by bribery.") (internal quotations omitted). As it stands, Appellants' allegations of mail and wire fraud fail to establish a violation of *§ 1962(c).*

D. Section 1962(d):

18 U.S.C. § 1962(d) makes it illegal "for any person to conspire to violate any of the provisions of *subsection (a), (b),* or *(c)* of this section." Tal, Inc. and Bricktown, Inc.'s *§ 1962(d)* claim also fails. By its terms, *§ 1962(d)* requires that a plaintiff must first allege an independent violation of *subsections (a), (b),* or *(c),* in order to plead a conspiracy claim under *subsection (d). See United States v. Hampton, 786 F.2d 977. 978 (10th Cir. 1986)* ("The object of a RICO conspiracy must be to violate a substantive RICO provision."); *Schroder v. Volcker, 864 F.2d 97, 98 (10th Cir. 1988).* If a plaintiff has no viable claim under *§ 1962(a), (b),* or *(c),* then its subsection (d) conspiracy claim fails as a matter of law. *See Condict v. Condict, 826 F.2d 923, 927 (10th Cir. 1987)* ("[A]ny claim under **[**68]** *§ 1962(d)* based on a conspiracy to violate the provisions of *18 U.S.C. § 1962(a), (b),* or *(c)* must necessarily fall if the substantive claims are themselves deficient."); *BancOklahoma Mortgage, 194 F.3d at 1103; Edwards v. First Nat'l Bank, Bartlesville, Okla., 872 F.2d 347, 352 (10th Cir. 1989); Grider v. Texas Oil & Gas Corp., 868 F.2d 1147, 1151 (10th Cir. 1989); Torwest DBC, Inc. v. Dick, 810 F.2d 925, 927 n.2 (10th Cir. 1987).* Because Appellants have failed to allege a sufficient claim under subsections *(b)* or *(c),* their subsection *(d)* conspiracy claim fails as a matter of law.

V. Pendant State Law Claims

Tal argues the district court improperly declined to exercise its pendant jurisdiction over the state law claims of fraudulent condemnation and tortious interference with business, because they alleged violations of the *Fifth* and *Fourteenth Amendments.* Conversely, both Douglas and the City argue the tort claim should be dismissed with prejudice. Douglas argues the tort claim is barred by the statute of limitations. The City argues it is barred by the Oklahoma Governmental **[**69]** Tort Claims Act. We need not decide these issues.

The district court was precluded from considering the Appellants' *Fifth Amendment* claim by the *Rooker-Feldman* doctrine. As for the other state law tort claims, we note that "[t]he *Fourteenth Amendment* [is not] a font of tort law." *Daniels v. Williams, 474 U.S. 327, 332, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986)*. Additionally, the court was not required to consider either the merits or the procedural issues attendant to the state law claims. Because the district court properly dismissed all of Appellants' federal claims, it was well within its discretion under *28 U.S.C. § 1367(c)(3)* to decline to exercise supplemental jurisdiction over plaintiffs' state-law claims. *Exum v. United States* **[*1271]** *Olympic Comm., 389 F.3d 1130, 1138-39 (10th Cir. 2004)*; *Lancaster v. Indep. Sch. Dist. No. 5, 149 F.3d 1228, 1236 (10th Cir. 1998)*. The court, therefore, did not err in dismissing the state interference with business claims without prejudice.

CONCLUSION

We **AFFIRM** the district court's dismissal of Tal's Complaint, and Tal, Inc. and Bricktown, Inc.'s Second Amended Complaint **[**70]** under *Rule 12(b)(6) of the Federal Rules Civil Procedure*. We also **AFFIRM** the district court's dismissal of the pendant state law claims without prejudice.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MOSHE TAL, et a!.,

Plaintiffs - Appellants,

V.

DAN RANDOLPH HOGAN, et al., No. 03-6293

Defendants - Appellees,

THE CITY OF OKLAHOMA CITY, et al.,

Amicus Curiae.

ORDER
Filed September 11, 2006

Before **BRISCOF, MURPHY** and **O'BRIEN**, Circuit Judges.

Appellant's petition for rehearing is denied. Appellant's motion to file supplemental exhibits to appellant's petition for rehearing and application for leave of court to accept said supplemental public record documents two business days late is denied.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

By: S/Deputy Clerk
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

BRICKTOWN 2000, INC., and TAL TECHNOLOGIES, INC.,	)	["*FILED*" 9/30/03]
Plaintiffs,	)	
vs.	)	Case No. CIV-02-0324-F
DAN RANDOLPH HOGAN, et al.,	)	
Defendants.	)	

ORDER

Before the court is the Motion to Dismiss Plaintiffs' Second Amended Complaint of Defendants Dan Randolph Hogan; TMK/Hogan Joint Venture (nka Commercial Real Estate Services Joint Venture); Hogan Property Management L.L.C.; Bricktown-TMK/Hogan Parking, L.L.C. (nka Bricktown-SMC/Hogan L.L.C.); Bricktown-TMK/Hogan Entertainment, L.L.C. (nka Bricktown Entertainment L.L.C.); Mark D. Elgin; Stonegate Management Company, L.L.C.; Elgin Development Company, L.L.C; and TDC Company, L.L.C, filed January 31, 2003 (docket entry no. 113), and Defendant Tiana P. Douglas' Motion to Dismiss, filed January 31,2003 (docket entry no. 115). Upon review of all of the parties' submissions in support of and in opposition to the motions, as well as the Brief Amicus Curiae of the City of Oklahoma City and the Oklahoma City Urban Renewal Authority in Support of the Motions to Dismiss Second Amended Complaint, and Plaintiff's Response to Amicus Brief, the court makes its determination.

Fed.R.Civ.P. 12(b)(6) Standard

The purpose of a Fed.R.Civ.P. 12(b)(6) motion to dismiss is to test the sufficiency of the complaint, and the court must accept all well-pleaded allegations, as distinguished from conclusory allegations, as true and must construe those well-pleaded allegations in the light most favorable to the plaintiffs. Maher v. Durango Metals, Inc. 144 F.3d 1302, 1304 (10th Cir. 1998); Coosewoon v. Meridian Oil Co., 25 F.3d 920 924 (10th Cir. 1994). The issue in reviewing the sufficiency of the complaint is no. whether the plaintiffs will prevail, but whether the plaintiffs are entitled to offer evidence in support of their claims, Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) *overruled on other grounds by* Harlow v. Fitzgerald, 457 U.S. 800 (1982). Dismissal under Rule 12(14(6) is a "harsh remedy which must be cautiously studied, not only to effectuate the spirit of the liberal rules of pleading but also to protect the interests o justice." Cayman Exploration Corp. *v.* United Gas Pipe Line Co.,873 F.2d 1357, 1359 (10th Cir. 1989). A complaint should not be dismissed for failure to state claim"unless it appears beyond doubt that the plaintiff[s] can prove no set of facts in support of [their] claim[s] which would entitle [them] to relief." Conley v. Gibson, 35 U.S. 41, 45-46 (1957).

The Rooker-Feldman Doctrine

The threshold question for the court is whether plaintiffs' claims survive the jurisdictional bar of the Rooker-Feldman doctrine. *See,* Rooker v. Fidelity Trust Co. 263 U.S. 413, 414-416 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983). The court must undertake this inquiry before addressing the non-jurisdictional issues raised by defendants. Long v. Shorebank Dev. Corp., 182 F.3d 548, 554-555 (7th Cir. 1999).

The Rooker-Feldman doctrine provides that federal courts, other than the Unite States Supreme Court, lack jurisdiction to adjudicate claims seeking review of state court judgments. *See,* Feldman, 460 U.S. at 486; Rooker, 263 U.S. at

415-416. The party losing in a state court proceeding is generally "barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." Johnson v. De Grandy, 512 U.S. 997, 1005-1006 (1994). Review of the state court judgment must proceed to the state's highest court and then to the United States Supreme Court pursuant to 28 U.S.C. § 1257. *See,* Facio v. Jones, 929 F.2d 541, 543 (10th Cir. 1991).

The Rooker-Feldman doctrine bars not only cases seeking direct review of state court judgments; it also bars cases that are "inextricably intertwined" with a prior state court judgment. *See,* Feldman, 460 U.S. at 482 n. 16. In determining whether the federal claims are inextricably intertwined with the state court judgment, the court must ask "whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment." Kenmen Engineering v. City of Union, 314 F.3d 468, 476 (10th Cir. 2002).

The Tenth Circuit has previously held that the Rooker-Feldman doctrine should not be applied against "non-parties." Johnson v. Riddle, 305 F.3d 1107, 1116 (10th Cir. 2002). According to the court, "this general rule follows from Rooker-Feldman's underlying premise: the doctrine prohibits suits in lower federal court that would be in substance, *appellate* review of state-court judgments." Kenmen Engineering, 314 F .3d at 480. "Because 'judgments' only decide rights of 'parties,' a person would generally have no basis (or right) to appeal a judgment to which that person was not a party." *Id.*

Although the Supreme Court has not decided the question, the Tenth Circuit has also applied the Rooker-Feldman doctrine to judgments of intermediate state courts. *See,* Kenmen Engineering, 314 F.3d at 473.

In their motions, defendants contend that all of plaintiffs' claims are barred under the Rooker-Feldman doctrine because they are inextricably intertwined with the state court judgments in City of Oklahoma City v. Oklahoma City Urban Renewal Authority, 988 P.2d 901 (Okla. 1999) ("Tal I")[1], State ex rel. Tal v. City of Oklahoma City, 19 P.3d 268 (Okla. 2000) ("Tal III")[2]

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[1] On January 12, 1999, a group of taxpayers of the City of Oklahoma City ("City"), calling themselves Taxpayers Against Ripoffs ("TAR."), submitted a *qui tam* Written Demand to the City Clerk pursuant to Okla. Stat. tit, 62, §§ 372 and 373, regarding several transactions related to the Oklahoma City Metropolitan Area Projects program, known as "MAPS." On January 26, 1999, the City brought a declaratory judgment action against Oklahoma City Urban Renewal Authority ("OCURA"), Bricktown Parking Investors, L.L.C. (defendant, Bricktown-TMK/Hogan Parking, L.L.C.) and defendant, Bricktown-TMK/Hogan Entertainment, L.L.C., seeking a declaration that the Parking Redevelopment Agreement, the Ground Lease and the Redevelopment Agreement were valid, or in the alternative, a declaration that the agreements were void and ordering the return of MAPS property and any amounts owed to the City. During trial, Moshe Tal (the purported principal of plaintiffs) and the other T.A.R. members moved to intervene and for continuance of the action. The motion to intervene was formulated as a *qui tam* action under Okl. Stat. tit. 62, §§ 372 and 373 based upon the Written Demand. The trial court denied the motion. The Oklahoma Supreme Court. in City of Oklahoma City v. Oklahoma City Urban Renewal Authority, 988 P.2d 901 (Okla. 1999) affirmed the trial court's ruling and concluded that Moshe Tal and T.A.R. lacked standing to intervene in the declaratory judgment action. The court found that the City had adequately represented the interests of all taxpayers, including T.A.R., and was entitled to the presumption that it was doing so in good faith.

[2] On March 15, 2000, Moshe Tal and other T. A.R. members filed a *qui tam* action against the City, defendants herein and others, based on the January 12, 1999 Written Demand. Defendants moved to dismiss on the basis that Tal I held that Moshe Tal and T.A.R. lacked standing to prosecute a *qui tam* action. The trial court granted the motion. In State ex rel. Tal v. City of Oklahoma City, 19 P.3d 268

and/or City of Oklahoma City v. Tal Technologies Inc., Case No. 94,045 (Okla. Civ. App. July 31, 2001) ("Condemnation Action").[3]

(Okla. 2000) *(per curium)*, the Oklahoma Supreme Court held that Tal and TAR.'s claims in the *qui tam* action were clearly and unequivocally disposed of in Tal I.

[3] On March 25, 1997, the City of Oklahoma City brought a condemnation action against Tal Technologies, Inc. (plaintiff herein), seeking to condemn Parcels 8016 & 8019 (the 1.4 acres at issue in this action). The trial court entered orders on August 29, 1997 and October 2, 1997, granting the City's right to condemn. On September 25, 1999, Tal Technologies, Inc. filed a motion to reconsider and modify the orders, claiming, in part, that it had discovered that the parcels were never part of the MAPS plan, and thus, the City's claim of need of the property for MAPS was false and deceived the court and that the parcels had been transferred to OCURA for the purpose of selling the parcels to a private developer who would use the property not for parking, public park or any public recreation, but for-profit restaurants and retail shops. The trial court denied the motion. Tal Technologies, Inc. filed a second motion to reconsider, which was also denied. On appeal, the Oklahoma Court of Civil Appeals, in Case No. 94,045, treated Tal Technologies, Inc.'s first motion to reconsider as the requisite pleading to invoke the statutory power of the court to vacate a judgment under Okla, Stat. tit. 12, § 1031. *See,* Civil Court of Appeals' Opinion, Exhibit D of Hogan Defendants' Appendix to Motion to Dismiss Second Amended Complaint, pp. 5-6. The court found that the pleading sufficiently alleged fraud, practiced by the successful party, in obtaining a judgment or order under § 1031(4). *Id.* at p. 6. The court, however, found that Tal Technologies, Inc. had failed to show how it was prevented by the City from discovering the alleged fraud prior to judgment. *id.* at p. 7. In addition, the court found a lack of diligence on the part of Tal Technologies, Inc. in trying to discover and expose the fraud. The court also found that the corporation had waived its challenge. *Id.* at p. 8. Furthermore, the court found that the City "had a valid public purpose for acquiring the lots and had discretion to devote the lots to any of several purposes within the MAPS project, including redevelopment." *Id.*, p. 9.

As to plaintiff, Bricktown 2000, Inc., the court finds that its claims against defendants are not barred by the Rooker-Feldman doctrine. Bricktown 2000 was not a party to the state court litigation in Tal I or Tal III, and, therefore, was unable to appeal either judgment in state court.[4] The Rooker-Feldman doctrine presupposes that the proper recourse for an unsuccessful party in state court litigation is to appeal the adverse judgment through the state court system. Having had no occasion (or standing) to appeal the subject state court decisions, the court finds that plaintiff, Bricktown 2000, Inc., cannot be bound by the Rooker-Feldman doctrine. Despite defendants' arguments to the contrary, the court finds that the circumstances in this case are clearly distinguishable from the circumstances in Kenmen Engineering. There, three of the plaintiffs, although not named as defendants in the state court action but one of which was an officer and two of which were agents of the named defendant, were clearly found to he within the ambit of the state court's injunction which was directed to the named defendant and "its officers, agents, servants, employees, attorneys or representatives." Furthermore, the damages sought by these plaintiffs in the federal action were a

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[4] In Tal I, the Oklahoma Supreme Court stated: "[b]ecause we conclude that Moshe Tal's petition for intervention was correctly denied, he stands excluded as a party litigant below and has no standing to tender for our review any errors made by the trial court." 988 P.2d at 906. In State ex rel. Tal v. City of Oklahoma City, 61 P.2d 234, 241 (Okla. 2002), the Oklahoma Supreme Court further stated *"Tal I* also, in effect ruled that because taxpayers were properly denied intervention they were excluded as party litigants and had no standing to tender for our review in that appeal an errors that may have been made in the judgment upholding the Agreements as lawful. . . Thus. although *Tal I* discussed the Agreements, it did not affirm the trial court judgment declaring their lawfulness."

If the taxpayers, including Moshe Tal, in Tal I did not have standing to appeal the trial court's rulings, plaintiff, Bricktown 2000, Inc., clearly did not have standing to appeal the rulings.

result of having to comply with the state court's injunction, and absent that state court injunction, plaintiffs would not have had standing to bring their federal suit. Kenmen Engineering, 314 F.3d at 481. Such is not the case for plaintiff, Bricktown 2000, Inc. Its alleged injuries did not result from the judgments in Tal I and Tal III and its standing is not based upon the judgments.

As to plaintiff Tal Technologies, Inc., the court finds that its claims against defendants, to the extent they seek recovery of damages predicated on the loss of the 1.4 acres, are barred by the Rooker-Feldman doctrine. As already noted in footnote number 3, the City of Oklahoma brought a condemnation proceeding to acquire two parcels of land (the 1.4 acres which are the subject of this action) owned by Tal Technologies, Inc. After the trial court entered orders adjudicating the City's right to condemn, Tal Technologies, Inc. filed two motions to reconsider. The motions were denied. Treating the first motion as the requisite pleading to invoke the statutory power of the court to vacate a judgment under Okla. Stat. tit. 12, § 1031, and finding a sufficient allegation of fraud under § 1031(4), the Oklahoma Court of Civil Appeals affirmed the trial court's denial of the motions to reconsider. In so doing, the appellate court concluded that Tal Technologies, Inc. had not shown how it was prevented by the City from discovering the alleged fraud prior to judgment. *See,* Civil Court of Appeals' Opinion, Exhibit D of Hogan Defendants' Appendix to Motion to Dismiss Second Amended Complaint, p. 7. The court additionally found a lack of diligence by Ta Technologies, Inc. in discovering and exposing the fraud and that it had waived it challenge by failing to plead it. *Id.* at p. 8. However, the appellate court further found that the City had "a valid public purpose for acquiring the property and had th discretion to devote the lots to any of several purposes within the MAPS project including redevelopment." *Id.* at p. 9.

As previously discussed, the appropriate inquiry is whether the injury alleged b the federal plaintiff resulted from

the state court judgment itself or is distinct from the judgment. Kenmen Engineering v. City of Union, 314 F.3d at 476. Many of the injuries of which plaintiff Tal Technologies, Inc. complains in this action are the losses to plaintiff resulting from the property being condemned by the City. In all of plaintiff' claims, plaintiff is at least seeking the value of the property (alleged to be about $7 million). And for the RICO claims, the RICO Case Statement shows additional losses which may include losses resulting from the property being condemned. *See,* RICO Case Statement, subsection (ii) to question no. 4, p. 7. All of the losses relating to the 1.4 acres stem directly from the state court judgment condemning the property. Plaintiff's effort to portray these injuries as RICO[5], Sherman Act[6] and state law violations is insufficient to overcome the Rooker-Feldman doctrine. If this court were to grant the relief plaintiff seeks, this result would effectively reverse the state court judgment condemning the property (adjudicating the issues of public necessity an alleged fraud) and awarding an amount of just compensation to the plaintiff for the property. The claims of plaintiff, Tal Technologies, Inc., are inextricably intertwined with the state court judgment in the Condemnation Action. Therefore, plaintiff claims, to the extent they seek recovery of damages predicated on the loss of the 1.4 acres, are barred under the Rooker-Feldman doctrine.

As to plaintiff, Tal Technologies, Inc.'s claims, to the extent they seek to recover damages for losses based on something other than 1.4 acres, the court concludes that the Rooker-Feldman doctrine does not apply. Tal Technologies, Inc. was not a part to the Tal I and Tal III actions and these claims have not been shown to be inextricably intertwined with the Condemnation Action. Racketeer Influenced and Corrupt

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[5] Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*

[6] 15 U.S.C. § 2.

Organizations Act, 18 U.S.C. § 1961, *et seq.*

RICO claims

18 U.S.C. § 1962(b)

In the Second Amended Complaint, plaintiffs allege that defendants violated I U.S.C. § 1962(b). Section 1962(b) makes it unlawful for "any person through a patter of racketeering activity or through collection of an unlawful debt to acquire or maintain directly or indirectly, any interest in or control of any enterprise which is engaged ir or the activities of which affect, interstate or foreign commerce." 18 U.S.C. § 1 962(b). The purpose of the statute is "to prohibit efforts to muscle in on legitimate business through the commission of a pattern of racketeering activity." Smith & Reed, Civil RICO, ¶ 6.04[5][b]. In order to state a claim under section 1962(b), a plaintiff must allege injury arising from the acquisition or maintenance of any interest in or control of any enterprise. *See,* Discon, Inc. v. NYNEX Corn., 93 F.3d 1055, 1063 (2nd Cir. 1996) (dismissing section 1962(b) claim where plaintiff did not allege injury from defendants acquisition or maintenance of a telephone company enterprise), *rev 'd on other grounds,* 525 U.S. 128 (1998); *see also,* Advocacy Organization for Patients an Providers v. Auto Club Ins. Ass'n, 176 F.3d 315, 33O-331(6th Cir.), cert. denied, 528 U.S. 871 (1999); Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1190 (3rd Cir. 1993). The "acquisition or maintenance" injury must be distinct from that resulting from the commission of the predicate acts. *See, Id.*

The court finds that plaintiffs have failed to allege an acquisition or maintenance injury distinct from injury caused by the alleged commission of the predicate acts. As alleged, plaintiffs' injuries resulted from the alleged predicate acts of mail and wire fraud and bribery. *See e.g,* RICO Case Statement, answer to question no. 16, p. 12. The injuries alleged are not separate and distinct injuries caused by the alleged acquisition or maintenance of the alleged enterprises, the Oklahoma City

Urban Renewal Authority ("OCURA") and the City Council. "Without a distinct 'acquisition injury,' [a plaintiff] cannot state a cause of action under subsection 1962(b)." Discon, 93 F.3d at 1063. Because plaintiffs have failed to allege a distinct acquisition or maintenance injury, the court finds that they have failed to state a claim against defendants under 18 U.S.C. § 1962(b).

In addition, the court finds that plaintiffs have failed to sufficiently set forth facts to show that each of the defendants acquired or maintained an interest in or control of the alleged enterprises, OCURA and the City Council. Paragraph 183 of the First Cause of Action alleges that "defendants Hogan, Hogan Property, Bricktown, TMK/Hogan Entertainment, Elgin, Elgin Development Company, persons within the meaning of RICO, acquired or maintained, directly or indirectly, interest in or control over the two 18 U.S.C. [§] 1964 enterprises herein." In addition to not including all of the defendants in their allegation, plaintiffs simply parrot the language of the RICO statute in alleging interest in or control of the two enterprises. Interest or control is not shown simply by parroting the language of the RICO statute. Advocacy Organization, 176 F.3d at 329. At paragraph 184 of the First Cause of Action, plaintiffs set forth allegations of alleged control through bribery and mail fraud. These allegations, however, are not sufficient to show defendants acquiring or maintaining control over OCURA or the City Council. in their response, plaintiffs contend that defendants' arranging financial support of OCURA *via* operating as the landlord at a below-market rate clearly qualifies under 18 U.S.C. § 1962(b). However, the cases cited by plaintiffs for support of its "arranging financing" theory are clearly distinguishable from this case.[7] The court concludes that

[7] First Interregional Advisors Corp. v. Wolff, 956 F. Supp. 480, 487 (S.D.N.Y. 1997); Constellation Bank, N.A. v. C.L.A. Management Co., 1995 WL 42285, at *4 (E.D.N.Y. 1995); and First National City Bank & Trust Co. v. Federal Deposit Ins. Co., 730 F.Supp. 501 (E.D.N.Y. 1990).

those cases do not support the finding of acquisition or maintenance of control of OCURA. Moreover, the court finds that the bribery allegations are insufficient to show control over OCURA or the City Council. Plaintiffs, in answer to question no. 5 of the RICO Case Statement, state that "Defendants' broad pattern of mail and wire fraud, combined with Defendants' bribery served to . . . seal [ ] Defendants' control over both Urban Renewal and the City Council, by assuring that key members of both entities support Defendants' fraudulent Scheme." *See,* RICO Case Statement, answer to question no. 5, p 9. The allegation that mail and wire fraud[8] and bribery sealed support by "key" members of both entities is insufficient, in the court's view, to show acquisition or maintenance of control over OCURA and the City Council. The racketeering activity must lead to the acquisition or maintenance of an interest in or control of the enterprise. Advocacy Organization, 176 F.3d at 328-329; Lightening Lube ,4 F.3d at 1190-1191; In re VMS Sec. Litig., 752 F. Supp. 1373, 1403-1404 (N.D. Ill. 1990). Plaintiffs' allegations in the Second Amended Complaint[9] do not show the alleged racketeering activities resulted in defendants' acquisition or maintenance of interest in or control of OCURA and/or the City Council. Therefore, plaintiffs have failed to state a claim under 18 U.S.C. 1962(b).[10]

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[8] Although wire fraud is referred to in the RICO Case Statement, plaintiffs do not allege in the First Cause of Action that defendants exercised control over OCURA and the City Council *via* wire fraud.

[9] The RICO Case Statement does not set forth any additional factual allegations to show interest in or control of the two enterprises. It refers the court to the First Cause of Action of the Second Amended Complaint for a description in detail of the acquisition or maintenance of an interest in or control of the enterprises. *See,* answer to question no. 12, p. 11.

[10] In light of the court's analysis in regard to this claim, the court need not address argument proffered by defendants in

18 U.S.C. § 1962(c)

Plaintiffs, in the Second Amended Complaint, allege that defendant, Tiana Douglas, violated 18 U.S.C. § 1962©. Section 1962© makes it unlawful for "any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." In order to state a violation under § 1962©, plaintiffs must allege (1) conduct (2) of an enterprise (3) through a pattern of racketeering. Brannon v. Boatmen's First Nat. Bank of Oklahoma, 153 F.3d 11441150 (10th Cir. 1998); Boone v. Carlsbad Bancorporation, Inc., 972 F.2d 1545, 1555 n.7 (10th Cir. 1992).

RICO defines "racketeering activity" as any act that constitutes specified state and federal crimes, including mail fraud, wire fraud and bribery. 18 U.S.C. § 1961(l) These acts are referred to as "predicate acts" because they form the basis of liability under RICO. Banc Oklahoma Mortgage Corp. v. Capital Title Company, Inc., 194 F.3d 1089, 1102 (10th Cir. 1999). However, a defendant does not have to be formally convicted of any predicate act before liability under § 1962© may attach. *Id.*

Plaintiffs allege that defendant, Tiana Douglas, committed predicate acts of mail fraud, 18U.S.C. 1341,wirefraud, 18U.S.C. § 1343 and of bribery, 18 U.S.C. § 201. To state a claim of mail fraud under § 1341, plaintiffs must allege (1) the existence o a scheme or artifice to defraud or obtain money or property by false pretenses representations or promises, and (2) use of the United States mails for the purpose o executing the scheme. Banc Oklahoma Mortgage Corp., 194 F.3d at 1102. "'The elements of wire fraud are very similar, but

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support of dismissal of the § 1962(b) claim.

require that the defendant 'use interstate wire, radio, television communications in furtherance of the scheme to defraud.'" *Id.* (quoting Bacchus Industr., Inc. v. Arvin Industr., Inc., 939 F.2d 887,892 (l0th Cir. 1991)).

Fed.R.Civ.P. 9(b)'s particularity requirement applies to claims of mail and wire fraud. Cayman Exploration Corp., 873 F.2d at 1362.[11] Allegations of predicate mail and wire fraud acts should state the contents of the communications, who was involved where and when they took place and explain why they were fraudulent. Mills v. Polar Molecular Corp., 12 F.3d 1170, 1175 (2nd Cir. 1993). Allegations should also show how the communications furthered the fraudulent scheme. McLauglin v. Anderson, 962 F.2d 187, 191 (2nd Cir. 1992).

In the instant ease, plaintiffs set forth the predicate acts in Section X of the Second Amended Complaint. The allegations of mail fraud set forth in Section X(a) as to defendant, Tiana Douglas, fail to satisfy the particularity requirement of Rule 9(b). Although plaintiffs, in Section X(a), identify the contents of the mail communications, the speaker, where and when they took place, there are no allegations of how such communications were fraudulent nor are there allegations of how the communication furthered the alleged scheme to defraud. The communications, as pled, appear to th innocuous business communications of defendant, Tiana Douglas. In a footnote at p. 18 of their response brief, plaintiffs attempt to demonstrate how the mailings wen fraudulent. The paragraphs of the Second Amended Complaint referenced by plaintiff do not provide sufficient facts to demonstrate how the mailings were fraudulent or how they furthered the alleged fraudulent scheme to defraud. These mailings therefore cannot qualify as predicate acts. Although not mentioned in the footnote, the May

[11] Fed.R.Civ.P. 9(b) provides in pertinent part that '[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity."

18 1998 letter by Mr. Tolbert, which "Defendants" allegedly caused to be mailed, does appear to satisfy Rule 9(b). See, Second Amended Complaint, ¶ 134 (letter intended by "Defendant TMK-Hogan to support its fraudulent July 17, 1997 representation that the Bricktown Association was as of the date of said proposal Defendant's partner").[12]

As to the alleged wire fraud communications in Section X(b), the August 1, 1997 submission *(see,* further description at ¶ 117 of Second Amended Complaint) the August 5, 1997 communication at city council meeting *(see,* further description at ¶ 119) and the telephone conversations concerning Mr. Tolbert's letter *(see,* further description of letter and intent at ¶ 134) appear to satisfy Rule 9(b). However plaintiffs have not shown through Section X(b), their response brief, or other allegations of the Second Amended Complaint, how the other alleged wire fraud communications satisfy Rule 9(b).[13] Consequently, these other alleged wire fraud communications cannot pass muster as predicate acts.

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[12] Plaintiffs, in Section X(a), have alleged mailings occurring after July 21, 1998 as violation of 8 U.S.C. § 1341. When a fraudulent scheme has reached fruition, mailings thereafter cannot be said to be for the purpose of executing the scheme and thus do not satisfy' the second require element of mail fraud. *See,* United States v. Cardall, 885 F,2d 656, 680-682 (10th Cir. 1989). The allegations of the Second Amended complaint show that defendant, TMK-Hogan, was selected as the developer of the entire 51 acres on July21, 1998. The court therefore concludes that none of the mailings sent after July 21, 1998 occurred in furtherance of the alleged scheme to defraud plaintiffs of their business-development rights.

[13] The court notes that plaintiffs have alleged predicate mail and wire fraud acts as to other defendants, however, the requirements of § 1962(c) must be established as to each individual defendant. De Falco v. Bernas, 244 F.3d 286, 315 n. 19 (2nd Cir. 2001).

Plaintiffs also allege defendant, Tiana Douglas, committed bribery under 18 U.S.C. § 201. Defendant has challenged the viability of a bribery claim under 18 U.S.C. § 201 and plaintiffs have conceded that they cannot state a bribery claim under that section. However, plaintiffs argue that "racketeering activity under 18 U.S.C. 1961 includes 'any act involving. . . bribery. . . which is chargeable under State law and punishable by imprisonment for more than one year." *See,* Plaintiffs' response, p. 20. They contend that an act in violation of Okla. Stat. tit. 21, § 381 ("Bribing officers") qualifies as a racketeering activity. *Id.*

Neither the Second Amended Complaint nor the RICO Case Statement allege a violation of Okla. Stat. tit. 21, § 381 by defendant, Tiana Douglas. In addition plaintiffs have not requested leave to amend their Second Amended Complaint to allege a violation of § 381. Even if the court were to allow such amendment or construe th Second Amended Complaint as alleging a violation of § 381, it is not at all clear to the court that the alleged bribery of Mayor Humphreys or Commissioner Nichols, as pled would constitute a violation of § 381. However, for purposes of the court's ruling, the court assumes that the alleged bribery acts of defendant, Tiana Douglas, would constitute a violation of § 381.

Although plaintiffs have alleged racketeering activity consisting of mail fraud wire fraud and bribery, the court finds that plaintiffs have failed to allege sufficient facts to show a "pattern of racketeering activity." RICO defines "pattern of racketeering activity" as requiring "at least two acts of racketeering activity" within a ten-year period. 18 U.S.C. § 1961(5). In order to satisfy RICO' s pattern requirement, plaintiffs must show two elements – "a relationship between the predicates" and "the threat of continuing activity." Duran v. Carris, 238 F.3d 1268, 1271 (10th Cir. 2001). Only the continuity prong of the pattern element is at issue in this case. "Continuity' is both a closed and open-ended concept: closed-

ended referring to a closed period of repeated conduct and open-ended referring to conduct that by its nature projects into the future with a threat of repetition." Resolution Trust Corp. v Stone, 998 F.2d 1534, 1543 (10th Cir. 1993). A plaintiff "may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months are insufficient to show closed-ended continuity." *Id.* In contrast, "[o]pen-ended continuity depends upon the facts of each case, and may be established by showing that the predicates themselves involve a distinct threat of long-term racketeering activity, either implicit or explicit, or that the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise." *Id.* Two factors are particularly relevant to the determination of continuity: the duration of the related predicate acts and the extensiveness of the RICO enterprise's scheme. *Id.* Under the extensiveness prong, the court is to consider the number of victims, the number of racketeering acts, the variety of racketeering acts, whether the injuries caused were distinct, the complexity and size of the scheme, and the nature or character of the enterprise or unlawful activity. *Id.*

The Second Amended Complaint fails to specifically identify the predicate acts through which defendant, Tiana Douglas, allegedly conducted or participated in the conduct of OCURA and the predicate acts through which defendant allegedly conducted or participated in the conduct of the City Council. Nonetheless, assuming that the mail and wire fraud communications, which satisfy Rule 9(b), and the bribery acts apply to conducting or participating in the conduct of both enterprises, the court finds that plaintiffs' allegations fail to show that defendant participated in the conduct of the enterprises through a "pattern of racketeering activity." As stated, a plaintiff who alleges a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time.

Resolution Trust Corp., 998 F. 2d at 1543. Plaintiffs have failed to sufficiently allege a closed period of continuity. Plaintiffs have failed to allege a series of related predicates involving both enterprises over a substantial period of time.[14] They have further failed to allege facts to show a threat of continuing activity. *Id.*[15]

Even assuming that the court's Rule 9(b) analysis of the alleged predicate acts of mail and wire fraud under is unduly myopic, the court also finds that plaintiffs' allegations, taken as true, would not show a closed-ended continuity. While the duration of defendants' alleged predicate acts in furtherance of the alleged scheme to defraud (from March, 1997 to July, 1998)

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[14] In the Section X(c)(iii) and (c)(x), plaintiffs allege that "[f]rom July 1998 through the time of filing this Complaint, Defendant Douglas caused the appointment of Councilman [Guy] Liebmann to political positions with various City trusts, and additionally appointed Liebmann director of Second Century, in exchange for Liebmann's vote as stated in ¶ 157 of this Second Amended Complaint" and "[f]rom about February 1997, though about early part of 2001, Defendant, Douglas, Hogan and Elgin further bribed Urban Renewal Commissioner [Larry] Nichols by using their political influence and political position and persuading and causing City officials to make substantial public improvements surrounding the Mid America Tower building in exchange for Nichols' support of all Defendant']s." Although these allegations allege bribery over a substantial time, rather than a few weeks or months, *see,* H.J.. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 252 (1989), the acts are for payment of Liebmann's vote in July, 1998 in favor of, and Nichols' support of, the selection of TMK/Hogan as developer. Therefore, the court concludes that these acts do not show a series of related predicates over a substantial time. Furthermore, these acts do not suggest a threat of continuing criminal activity.

[15] In Section W of the Second Amended Complaint, plaintiffs set forth allegations about "Defendants' East Wharf Fraud" to show continuity. However, none of those allegations show that defendant, Tiana Douglas, was involved in the alleged fraud.

and the number and variety of those racketeering acts may satisfy a finding of continuity, *see,* Resolution Trust Corp., 998 F.2d at 1544, the number of victims, the injuries suffered, the complexity and size of the scheme and the nature of the scheme, do not favor a finding of continuity. The nature of the scheme (defrauding plaintiffs of their business development rights), in particular, had a limited purpose and courts have found no continuity in such cases. *Id.* at p. 1545. Once TMK-Hogan was selected as developer, the alleged scheme to defraud was completed. The alleged scheme was a single scheme with a discrete goal. The allegations of the Second Amended Complaint do not show a threat of continuing illegal activity. At best, plaintiffs are "alleging a closed-end series of predicate act constituting a single scheme . . . to accomplish a discrete goal [approval of TMK-Hogan as developer] directed at a finite group 'with no potential to extend to other persons or entities." Duran, 238 F.3d at 1271 (quoting Boone, 972 F.2d at 1556)(quoting SIL-FLO, Inc. v. SFHC, Inc., 917 F.2d 1507, 1516 (10th Cir. 199O)). Thus, the allegations in the Second Amended Complaint do not meet the closed-ended continuity element.[16] Plaintiffs therefore have not alleged the type of activity in regard to defendant, Tiana Douglas, that RICO was enacted address. Accordingly, plaintiffs RICO claim against defendant, Tiana Douglas, for violation of § 1962© must b dismissed under Fed.R.Civ.P. 1 2(b)(6).

18 U.S.C. § 1962(d)

In the Second Amended Complaint, plaintiffs allege that the defendants violated 18 U.S.C. § 1962(d), which makes it unlawful for "any person to conspire to violate" 18 U.S.C. § 1962(b) or § 1962(c).

As the court has found no viable claim against

[16] The court also finds that plaintiffs have failed to allege sufficient facts to establish open-ended continuity.

defendants under § 1962(b), the § 1962(d) claim for conspiracy against defendants to violate § 1962(b) must fail as a matter of law. Lightning Lube, Inc.,4 F.3d at 1191.

In addition, the court finds that plaintiffs' conspiracy claims under § 1962(d) for violation of § 1962(c) (and violation of § 1962(b) assuming a viable claim under § 1962(b) exists) fail under Fed.R.Civ.P. 12(b)(6). To state a claim under § 1962(d), plaintiffs must allege facts to support a conclusion that each of the defendants consciously agreed to commit predicate acts. Hecht v. Commerce Clearing House, Inc., 897 F.2d 21, 25 (2nd Cir. 1990). Conclusory allegations of a conspiracy are insufficient. *Id.* (Because the core of a RICO civil conspiracy is an agreement to commit predicate acts, a RICO civil conspiracy complaint, at the very least, must specifically allege such an agreement.) There are no allegations in the Second Amended Complaint (or the RICO Case Statement) to support a conclusion (or inference) that each of the defendants consciously agreed to commit predicate acts. There are no allegations sufficient to infer that defendants agreed to violate the substantive RICO offense of § 1962©. The court therefore concludes that dismissal of the conspiracy claims under § 1962(d) is appropriate.

Section 2 of the Sherman Act

Plaintiffs, in the Second Amended Complaint, allege that defendants have violated section 2 of the Sherman Act, 15 U.S.C. § 2. Section 2 makes a combination or conspiracy to monopolize unlawful.[17] "To establish a claim for conspiracy to

[17] The relevant portion of section 2 provides"

> Every person who shall . . . combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the sever States . . shall be deemed guilty of a felony.

monopolize in violation of section 2, a plaintiff must plead facts sufficient to support four elements: (1) 'the existence of a combination or conspiracy to monopolize'; (2) 'overt acts done in furtherance of the combination or conspiracy'; (3) 'an effect upon an appreciable amount of interstate commerce'; and (4) 'a specific intent to monopolize." TV Communications Network, Inc. v. Turner Network Television, Inc., 964 F.2d 1022, 1026(1 Ut)) Cir. 1992) (quoting Olsen v. Progressive Music Supply, Inc., 703 F.2d 432, 438 (10th Cir.), cert. denied, 464 U.S. 866 (1983)).

In the Second Amended Complaint, plaintiffs allege that "Defendants conspired with each other, and wilfully, knowingly and intentionally engaged in unlawful acts and practices described above, to fabricate and create the illusion of a "legal" public hid, when in fact, the outcome of the 6/26/97 published RFP was predetermined by agreements between all Defendants." Plaintiffs allege that defendants engaged in unfair, improper and illegal conduct and set forth such conduct in thirteen paragraphs. Plaintiffs then allege that "Defendants' activities and participation in the bid-rigging and other related conduct . . . constitutes unlawful, improper, anti-competitive, deceptive and unfair conduct in violation of the Sherman Act, 15 U.S.C. § 2..." Plaintiffs further allege that defendants' "anti-competitive activities affected channels of interstate commerce ..."

Upon review, the court finds that plaintiffs' allegations are insufficient to state a claim of conspiracy to monopolize. Plaintiffs have failed to plead any facts to show or infer a conspiracy to achieve or further monopoly power. Plaintiffs use antitrust language, in their amended complaint, such as "bid-rigging" and "anti-competitive," but have failed to elaborate on these allegations. The use of antitrust "buzz words" does not supply the factual circumstances necessary to support plaintiffs'

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15 U.S.C. § 2.

conclusory allegations of a conspiracy to "monopolize." TV Communications Network, Inc., 964 F.2d at 1026. Furthermore, plaintiffs have failed to plead any facts to show or infer a specific intent by defendants to monopolize. There are no facts to show or infer that defendants specifically intended to conspire to achieve or further defendant, TMK/Hogan's monopoly power.

"A complaint is subject to dismissal where it does 'little more than recite relevant antitrust laws." TV Communications Network, Inc., 964 F.2d at 1027 (quoting Mountain View Pharmacy v. Abbott Labs., 630 F.2d 1383, 1387 (10th Cir. 1980)). The court finds that plaintiffs have failed to state a claim against defendants for conspiracy to monopolize.

Even if plaintiffs stated an antitrust claim against defendants, the court finds that defendants are entitled to immunity from such claim. Defendant, Tiana Douglas, specifically pleads immunity based upon the Parker state action immunity doctrine while the remainder of the defendants plead antitrust immunity under the Noerr-Pennington doctrine.

Generally, a state's anticompetitive actions are immune from civil antitrust laws. Parker v. Brown, 317 U.S. 341, 350-52 (1943). Relying on principles of federalism, the Supreme Court in Parker held that federal antitrust law did not apply because the state "as sovereign, imposed the restraint as an act of government which the Sherman Act did not undertake to prohibit." *Id.* at 352. The Supreme Court recognized "nothing in the language of the Sherman Act or in its history ... suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature." *Id.* at 350-351.

Parker clearly sets out the rule of state action immunity for the state as sovereign. However, in the instant case, the challenged activities are not directly attributed to the state legislature. In California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97 (1980), the Supreme Court set

forth a two-part test to determine whether the state action immunity is available to entities other than state legislatures. "First, the challenged restraint must be 'one clearly articulated and affirmatively expressed as state policy'; second, the policy must be 'actively supervised' by the State itself" *Id.* at 105 (quoting City of Lafayette, La. v. Louisiana Power & Light Co., 435 U.S. 389, 410 (1978)). In Town of Hallie v. City of Eau Claire, 471 U.S. 34,46(1985), the Supreme Court held that the active supervision requirement of Midcal does not apply to municipalities. The Court explained:

> Where a private party is engaging in the anti-competitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State. Where the actor is a municipality, there is little or no danger that it is involved in a *private* price-fixing arrangement. The only real danger is that it will seek to further purely parochial public interests at the expense of more overriding state goals. This danger is minimal, however, because of the requirement that the municipality act pursuant to a clearly articulated state policy. Once it is clear that state authorization exists, there is no need to require the State to supervise actively the municipality's execution of what it is a properly delegated function.

Id. at 47.

The Tenth Circuit has adopted a two-part test for evaluating municipal state action immunity. "First, the state legislature must have authorized the action under challenge. Second, the legislature must have intended to displace competition with regulation.," Allright Colorado Inc. v. The City and County of Denver, 937 F.2d 1502, 1506 (10th Cir. 1991)

(quoting Jacobs, Visconsi & Jacobs Co v. City of Lawrence, Kan., 927 F.2d 1111, 1120 (10th Cir. 1991)); *see also,* Buckley Constr., Inc .v. Shawnee Civic & Cultural Dev. Auth., 933 F.2d 853, 855 (10th Cir. 1991); Oberndorf v. City & County of Denver, 900 F.2d 1434, 1438 (10th Cir.), cert. denied, 498 U.S. 845 (1990)).

The Noerr-Pennington corollary to the Parker doctrine instructs that "federal antitrust laws also do not regulate the conduct of private individuals in seeking anticompetitive action from the government." City of Columbia v. Omni Outdoor Advertising. Inc., 499 U.S. 365, 379-380 (1991). That doctrine, distilled from two Supreme Court cases, and based upon prudential and constitutional concerns, instructs that the Sherman Act does not reach political activities, no matter how nefarious those activities may be. While the Parker doctrine applies to state action, the Noerr-Pennington doctrine applies to private parties seeking government action. In Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961), the Supreme Court held that "the Sherman Act does not prohibit two or more persons from associating together in an attempt to persuade the legislature or executive to take particular action with respect to a law that would produce a restraint or monopoly." *Id.* at 136. In United Mine Workers of America v. Pennington, 381 U.S. 657 (1965), a case involving attempts to influence the Secretary of Labor to set a higher minimum wage, the Supreme Court extended Noerr, stating that "Noerr shields from the Sherman Act a concerted effort to influence public officials regardless of intent or purposes." *Id.* at 670.

In Omni, *supra,* the Supreme Court emphasizing the broad nature of the Parker doctrine, held that no "conspiracy exception" could overcome state action immunity. The Court reasoned that:

> The rationale of Parker was that, in light of our national commitment to federalism, the general

> language of the Sherman Act should not be interpreted to prohibit anticompetitive actions by the States in their governmental capacities as sovereign regulators.

Id. at 374. The Court emphasized the strength of those principles when considering whether a limited conspiracy exception, only applicable to illegal conduct, such a bribery, is warranted. The Supreme Court states:

> Another approach is possible, which has the virtue of practicality but the vice of being unrelated to the purposes [of the Sherman Act]. That is the approach which would consider Parker inapplicable only if, in connection with the government action in question, bribery or some other violation of state or federal law has been established. Such unlawful activity has no necessary relationship to whether the governmental action is in the public interest. . . . [We] reaffirm our rejection of any interpretation of the Sherman Act that would allow plaintiffs to look behind the actions of state sovereigns to base their claims on perceived conspiracies to restrain trade.

Id. at 378-379 (internal citations and quotations omitted).

As with Parker, Noerr-Pennington's reach also was extended by Onmi in that the Supreme Court held that no conspiracy exception existed for Noerr-Pennington either, even one limited to situations involving "some element of unlawfulness." Omni, 499 U.S. at 383.

As to the immunity of defendant Tiana Douglas, the court finds that Oklahoma' detailed urban renewal legislation (Okla. Stat. tit. § 38-101 through § 38-123 authorized OCURA

to conduct the activities challenged by plaintiffs in the Second Amended Complaint. In addition, the court finds that the Urban Renewal statute clearly contemplate anticompetitive activity. *See,* Okla. Stat. tit. 11, § 38-108. Such conduct is the foreseeable result of authorizing OCURA to "make and execute contracts and other instruments necessary or convenient to the exercise of its powers," "to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain a otherwise, any real property," "to dispose of any real property" and "to enter into an contracts necessary." *Id.* The court concludes that the Urban Renewal statutes, taken together, demonstrate that the challenged activities are "clearly articulated an affirmatively expressed as state policy." Midcal, 445 U.S. at 410.

As to the state supervision requirement of Midcal, the court finds that sue requirement does not apply to OCURA and defendant, Tiana Douglas, acting a executive director of OCURA. In Town of Hallie, the Supreme Court held that such requirement does not apply to municipalities. *Id.* at 46. The court has previously discussed the rationale for that decision. The court concludes that this reasoning should apply equally to OCURA and' defendant, Tiana Douglas. See, Porter Testing Laboratory v. Board of Regents for the Oklahoma Agriculture and Mechanical Colleges, 993 F.2d 768, (10th Cir. 1993) (board of regents, executive secretary to the board and university did not have to show active state supervision of challenge activity). Given the nature of OCURA and its executive director, defendant, Tiana Douglas, the court finds that a showing of active supervision is not necessary to qualify for state action immunity. Therefore, the court concludes that defendant, Tiana Douglas, acting in her capacity as Executive Director of OCURA, is immune from liability for the challenged actions.

In their response, plaintiffs contend that defendant, Tiana Douglas, is not entitle to state action immunity because "OCURA, in the instant case, was not acting pursuant to [11] OS. § 38-101, but instead precisely according to 61 O.S. §§ 101,

et seq., the Oklahoma Public Buildings and Public Works Public Competitive Bidding Act of 1974 ("Public Bidding Act")." *See,* Plaintiffs' response, p. 34 (emphasis in original Plaintiffs argue that OCURA was not acting in its own right in the Bricktown MAPS project but instead was acting as the City's appointed agent. *Id.* The subject agreements and resolution cited in support of plaintiffs' argument do not support a contention that OCURA was not acting pursuant to the Urban Renewal statutes. The documents show otherwise. Nonetheless, even if OCURA was acting pursuant to the Public Bidding Act and did not choose CCBT partnership as the purported low bidder, the court concludes that defendant, Tiana Douglas, is still entitled to immunity because the competitive bidding act clearly authorizes anticompetitive action by permitting an entity to reject the bid of any bidder if it determines that is in the best interest of the State of Oklahoma. Okla. Stat. tit. 61, § 119; *see,* Buckley Construction, Inc., 933 F.2d at 856.

Analyzing the applicability of the Noerr-Pennington doctrine as to the remaining defendants, the court concludes that Noerr-Pennington immunity is available. The Supreme Court has clearly stated that efforts to influence public officials will not subject individuals to liability, even when the sole purpose of the activity is to drive competitors out of business. *See,* Pennington, 381 U.S. at 670; *see also,* Oberndorf 900 F.2d at 1439. The Second Amended Complaint reveals nothing more than defendants' attempts to persuade political figures or bodies to act in their favor. Therefore, the conduct falls squarely with the Noerr-Pennington doctrine and immunity is required for those acts.[18]

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[18] To the extent that plaintiffs argue that defendant, Tiana Douglas, was acting beyond her capacity as executive director, the court finds the defendant, in the individual capacity, is entitled to Noerr-Pennington immunity from suit for attempts to influence governmental bodies. ***See*** Bayou Fleet, Inc. v. Alexander, 26 F. Supp. 2d 894, 896 (E.D. La. 1998); Erie Builders Concrete Co. v. Erie-Western Pennsylvania Port Authority, 705 F. Supp. 1125, 1130-1131

Plaintiffs' allegations of bribery and mail and wire fraud do not abrogate Parker and Noerr-Pennington antitrust immunity. The Omni decision clearly holds that illegal actions do not remove a case from the ambit of Parker or Noerr-Pennington. As stated by the Omni court "[t]o use unlawful political influence as the test of legality of state regulation-undoubtedly vindicates (in a rather blunt way) principles of good government. But the [antitrust acts are not] directed to that end." Omni, 499 U.S. at 378. Omni teaches that criminal activity in the political realm is not governed by the antitrust laws. Consequently, attempts to influence governmental officials, such as officials of OCURA or the City Council, are shielded from antitrust immunity. See, Trigen Oklahoma City Energy Corp. v. Oklahoma Gas & Elec. Co., 244 F.3d 1220, 1227 (10th Cir. 2001) (alleged bad acts of improper payments, undue influence and lavish entertainment to gain business did not destroy state action immunity). Therefore, the court finds that plaintiffs' antitrust claim should be dismissed because all defendants are immune from Sherman Act liability for the political manipulation alleged by plaintiffs in the Second Amended Complaint.

State Law Claims

With the preceding analysis, the court has effectively disposed of all of plaintiffs' claims arising under federal law. Thus, the basis for federal subject matter jurisdiction has been extinguished. Under these circumstances, the court may decline to exercise supplemental jurisdiction over plaintiffs' state law claims. See, 28 U.S.C. § 1367(c)(3)[19] ; *see also,* Lancaster v.

(W.D. Pa. 1989); Chambers Dev. Co., Inc. v. Municipality of Monroevile, 617 F. Supp. 820, 823 (W.D. Pa 1985).

[19] Section 1367(c)(3) provides that "[t]he district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if. . . the district court has dismissed all claims over which it has

Independent School Dist. No. 5, 149 F.3d 1228, 1236 (10th Cir. 1996). Pursuant to 28 U.S.C. § 1367(c)(3), the court, in its discretion, declines to exercise supplemental jurisdiction over plaintiffs' state law claims Therefore, plaintiffs' state law claim for tortious interference with business and conspiracy to condemn by fraud claims are dismissed without prejudice.[20]

Conclusion

Based upon the foregoing, the Court **ORDERS** as follows:

1. The Motion to Dismiss Plaintiffs' Second Amended Complaint of Defendant Dan Randolph Hogan; TMK/Hogan Joint Venture (nka Commercial Real Estate Services Joint Venture); Hogan Property Management, L.L.C.; Bricktown TMK/Hogan Parking, L.L.C. (nka Bricktown-SMC/Hogan, L.L.C.); Bricktown TMK/Hogan Entertainment, L.L.C. (nka Bricktown Entertainment, L.L.C.); Mark D Elgin; Stonegate Management Company, L.L.C.; Elgin Development Company, L.L.C. and TDC Company, L.L.C., filed January 31, 2003 (docket entry no. 113), anc Defendant Tiana P. Douglas' Motion to Dismiss, filed January 31, 2003 (docket entry no. 115) are **GRANTED**.

2. Plaintiff, Tal Technologies, Inc.'s claims predicated upon the loss of the 1.4 acres are dismissed as barred under the Rooker-Feldman doctrine. Plaintiff, Bricktown 2000, Inc.'s

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original jurisdiction ..."

[20] The court is declines to exercise supplemental jurisdiction over plaintiff, Tal Technologies, Inc's state law claims, to the extent they can be predicated upon something other than the loss of the 1.4 acres. To the extent they are predicated upon the loss of the 1.4 acres, they are subject to dismissal under the Rooker-Feldman doctrine as previously discussed.

RICO and Sherman Act claims and Plaintiff, Tal Technologies, Inc.'s RICO and Sherman Act claims, predicated upon something other than the loss of the 1.4 acres, are dismissed pursuant to Fed.R.Civ.P. 12(b)(6). Plaintiff, Bricktown 2000. Inc.'s state law claims and Plaintiff, Tal Technologies, Inc.'s state law claims. predicated upon something other than the loss of the 1.4 acres, are dismissed without prejudice.

3. Further leave to amend the RICO and Sherman Act claims is **DENIED**. Plaintiffs have not requested such leave in their response papers and plaintiffs have had previous opportunities to amend the complaint, as well as the opportunity to provide further details of the RICO claims in the RICO Case Statement. In addition, amendments of plaintiffs' Sherman Act claim and plaintiff, Tal Technologies, Inc.'s RICO and Sherman Act claims, predicated upon the loss of the 1.4 acres, would be futile.

4. The court's ruling on defendants' motions disposes of all claims before the court. Judgment shall issue contemporaneously with this order.

DATED September 30, 2003.

S/S.P. Friot
STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

BRICKTOWN 2000, INC., and, TAL TECHNOLOGIES, INC.,	)	
Plaintiffs,	)	
vs.	)	No. CIV-02-324-F
DAN RANDOLPH HOGAN, et al.,	)	
Defendants.	)	

JUDGMENT

This matter came before the court upon the Motion to Dismiss Plaintiffs' Second Amended Complaint of Defendants Dan Randolph Hogan; TMK/Hogan Joint Venture (nka Commercial Real Estate Services Joint Venture); Hogan Property Management, L.L.C.; Bricktown-TMK/Hogan Parking, L.L.C. (nka Bricktown-SMC/Hogan L.L.C.); Bricktown-TMK/Hogan Entertainment, L.L.C. (nka Bricktown Entertainment, L.L.C); Mark D. Elgin; Stonegate Management Company, L.L.C.; Elgin Development Company, L.L.C.; and TDC Company, L.L.C., filed January 31,2003 (docket entry no.113), and Defendant Tiana P. Douglas' Motion to Dismiss, filed January 31, 2003 (docket entry no. 115), and the motions having been duly considered and the court having made its rulings by way of a separate order entered on this date, IT IS HEREBY ORDERED AND ADJUDGED that plaintiff, Tal Technologies, Inc.'s claims predicated upon the loss of the 1 .4 acres are dismissed as barred under the Rooker-Feldman doctrine. Plaintiff, Bricktown 2000, Inc.'s RICO and Sherman Act claims and Plaintiff, Tal Technologies, Inc.'s RICO and Sherman Act claims, predicated upon matters other than the loss of the 1 A acres, are dismissed pursuant to Fed.R.Civ.P. 12(b)(6). Plaintiff, Bricktown 2000, Inc.'s state law claims and

Plaintiff Tal Technologies, Inc's state law claims, predicated upon matters other than the loss of the 1.4 acres, are dismissed without prejudice

DATED at Oklahoma City, this [30th] of September, 2003.

S/Stephen P.Friot
STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

ROOM 1210, U.S. COURTHOUSE
OKLAHOMA CITY, OKLAHOMA 73102

Date: October 31, 2002

MOSHE TAL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	Case No. CIV-02-324-F
	)	
DAN RANDOLPH HOGAN, et al.,	)	
	)	
Defendants.	)	

ENTER ORDER:

Upon hearing in open court on October 30, 2002, the court rules as follows:

Attorney Peter Joseph is granted leave to appear pro hac vice on behalf of plaintiff Moshe Tal. Attorney Robert Keel is also deemed to represent plaintiff Moshe Tal.

The motion to strike the affidavit of Moshe Tal is granted.

Judgment is entered against plaintiff Moshe Tal on all claims, with no leave to amend.

The court notes that the claim for conspiracy to condemn by fraud is voluntarily withdrawn.

As to the defendant Tiana Douglas, the state law claim for tortious interference is dismissed without leave to amend because it is barred by limitations.

With respect to the state law claim for tortious interference as to the other defendants, the claim is dismissed without leave to amend insofar as it is asserted by plaintiff Tal, because Mr. Tal lacks standing. The state law claim for tortious interference as asserted by plaintiff Tal Technologies, Inc. and Bricktown 2000 is not dismissed as to any defendants other than defendant Douglas, as to whom that claim is dismissed without leave to amend because it is barred by limitations.

With respect to the Sherman Act claim, as to all defendants, the motions to dismiss are denied as to the limitations defense. The motions to dismiss are granted as to the requirement of pleading relevant channels of interstate commerce, with 30 days to amend. The motions to dismiss for lack of standing on the part of plaintiff Tal and Tal Technologies, Inc. are granted, without leave to amend.

With respect to the RICO claim, the motions to dismiss are denied as to limitations. The motion to dismiss for lack of standing is granted as to plaintiff Tal, without leave to amend. The motion to dismiss for lack of standing is denied as to plaintiff Tal Technologies, Inc. As to the motions to dismiss the RICO claims for deficient substantive RICO allegations, the motions are granted. Plaintiffs Bricktown 2000 and Tal Technologies are granted 30 days to amend and file a RICO statement.

By direction of Judge Stephen P. Friot, we have entered the above enter order.

Robert D. Dennis, Clerk

By: S/Lori Gray
Deputy Clerk

cc: all parties

02 -324 p014 wpd

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF OKLAHOMA

MOSHE TAL, et al.,

Plaintiffs,

vs .Case No. CIV-02-324-F

DAN RANDOLPH HOGAN, et al

Defendants.

TRANSCRIPT OF HEARING ON MOTIONS TO DISMISS

BEFORE THE HONORABLE STEPHEN P. FRIOT

UNITED STATES DISTRICT JUDGE

OCTOBER 30, 2002

APPEARANCES

FOR THE PLAINTIFFS: Mr. Peter A. Joseph
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Mr. Robert T. Keel
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FOR THE DEFENDANTS: Mr. Melvin R. McVay, Jr.
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301 North Harvey, Suite 200
Oklahoma City, Oklahoma 73102

THE COURT: We are here in case number Civil 02-324, Moshe Tal and others versus Hogan and others. Counsel for the parties and any pro se parties will please make your appearances.

MR. JOSEPH: I'm Peter Joseph, Your Honor. You allowed me in pro hac vice on Monday, and I'm not exactly sure which party I represent. I believe Mr. Keel represents the two corporate plaintiffs, and I would be assisting him. And then Mr. Tal, I think, is going to stay pro Se, and I would be assisting him also.

THE COURT: Now, Mr. Josephs, say that again, what you anticipate your role will be vis-a-vis Mr. Tal.

MR. JOSEPH: That I would be assisting Mr. Tal, Your Honor. We haven't quite decided at this point what our respective statuses would be, but at this point I would be assisting him.

THE COURT: Well, then, if you are going to assist him in any way, you need to file an entry of appearance on his behalf. Are you prepared to do that?

MR. JOSEPH: Well, I don't understand, Your Honor, the difference between the pro hac vice admission and that ——

THE COURT: Well, as you stand here today, do you represent Mr. Tal as an individual?

MR. JOSEPH: Yes, sir.

THE COURT: Okay. Then I need an entry of appearance signed by you on his behalf and the clerk will be happy to give you one.

MR. JOSEPH: Fine, Your Honor.

THE COURT: Okay. So the plaintiffs are collectively represented, then, by Mr. Josephs. And we'll have appearances for the defendants, please.

MR. McVAY: Your Honor, Mel Mcvay for all of the defendants with the exception of Tiana Douglas.

THE COURT: Okay.

MR. ROBERSON: Your Honor, Pm Brad Roberson, for Tiana Douglas.

THE COURT: That's Roberson?

MR. ROBERSON: Yes.

THE COURT: Okay.

MR. BRUMMITT: Daniel Brummitt, for the City of Oklahoma City, the amicus — one of the amicus.

THE COURT: Well, we have two amicis, the City and the Urban Renewal Authority.

MS. BATCHELOR: Yes, Your Honor, I'm Leslie Batchelor, and I represent the Oklahoma City Urban Renewal Authority, the other amicus in this action.

THE COURT: And we have another individual.

MR. KEEL: Yes, sir. Robert T. Keel for Bricktown 2000, Inc., and Tal Technologies, Inc.

THE COURT: I am reminded, Mr. Josephs, that your motion to appear pro hac vice was only on behalf of the two entity plaintiffs. In light of the representations you have made

here, the Court will, instanter, grant you pro hac status on behalf of Mr. Tal.

MR. JOSEPH: I appreciate that, Your Honor.

THE COURT: And in so stating, I assume Mr. Keel is disposed to continue in the same capacity as to the individual plaintiff as with the entity plaintiffs. Am I right about that, Mr. Keel?

MR. KEEL: Yes, sir.

THE COURT: And we'll proceed on that basis, then, with Messrs. Josephs and Keel on behalf of Mr. Tal.

MR. JOSEPH: Excuse me, Your Honor. I just want to make one remark that a lot of people refer to me as "Josephs." I'm actually "Joseph."

THE COURT: Joseph. Okay. I will delete the S, and I appreciate your mentioning that.

Obviously, we have a number of motions. The motions cover a number of grounds, some of which overlap, some of which do not. And I'm not going to hear argument on all issues. We could spend several days with arguments on all issues presented by these motions. The issues have for the most part been thoroughly briefed and well—briefed. And I am well—satisfied that it is not necessary to hear argument on all issues.

What I'm going to do is invite argument on issues that I think warrant argument, and I intend to take up the motions in the following order: The first motion that will be heard and resolved, and actually not heard, I'm ready to resolve it without argument, is the Hogan defendants' motion to strike the affidavit of Moshe Tal.

By the way, is that the right pronunciation?

MR. TAL: Moshe Tal.

THE COURT: Moshe Tal. Thank you, sir.

I will next hear argument on one issue that we'll get to relating to the Tiana Douglas motion to dismiss; we will then address what I'll call the Hogan group's motion to dismiss; and then the motions to dismiss of TDC, Stonegate Management Company, LLC, and Elgin —— is it Elgin or Elgin?

MR. McVAY: It is Elgin, Your Honor.

THE COURT: Elgin Development Company, LLC. So we'll address the motions in that order.

First, the Hogan defendants' motion to strike is granted. I don't want to convert the motions to dismiss into motions for summary judgment. Motions to dismiss do have their own inherent limitations, with which we are all very familiar. And in fact the standard to be applied on a 12(b) (6) motion to dismiss is a very stringent standard and very favorable to the party against whom the motion is made.

Be that as it may, I do not have any desire to convert the motions to dismiss into motions for summary judgments because, particularly in a matter of this complexity, I believe that there is, within reason, something to be gained by having an initial round of motions directed only to the matters which may be addressed under Rule 12. Obviously, at a later stage of the case, the parties will be free, on both sides, to assert their positions by way of motions for summary judgment or partial summary judgment. I won't be a bit surprised if we get to that stage as to some of these claims and so I believe that it is simply premature and, for numerous other reasons, inadvisable to in effect convert these motions to dismiss into motions for

summary judgment, and for that reason the Hogan defendants' motion to strike the affidavit of Moshe Tal is granted.

We have an additional counsel, I believe, present in the courtroom and he will make his appearance.

MR. BURKETT: William R. Burkett, City Attorney.

THE COURT: Very well.

That brings us to Tiana Douglas's motion to dismiss. And the Tiana Douglas motion to dismiss addresses all the claims. And I'm focusing now on the motion to dismiss as it relates to the state law claims. We have pleaded state law claims for tortious interference and conspiracy to condemn by fraud, but that brings me to a preliminary question. I am looking at page 23 of the plaintiffs' combined response and objections to the motions to dismiss of the Defendants Hogan, et al., filed on July 8th. On page 23 of that response, the plaintiffs state, and I quote, "For the purpose of avoiding redundancy, since the plaintiffs responded to all parties' identical position in moving to dismiss the complaint" -- strike that. I was in the wrong paragraph.

The plaintiffs state as follows on page 23, "After reading the defendants and amicus briefs regarding the condemnation issue, it is apparent to plaintiffs that count four of the complaint is not understood as a predicate act separate from the condemnation litigation. For this reason, the plaintiffs respectfully move the Court for leave to delete count four and amend the complaint accordingly to clarify all uncleared items."

I take it - - and this inquiry would be directed to the plaintiffs -- and in all cases, counsel, please work from the podium. I take it that count four relating to an allegation of conspiracy to condemn by fraud is no longer before the Court, but I want to make sure that we are all clear on that.

MR. TAL: Your Honor, since I filed the response, I guess I can address it best.

THE COURT: Mr. Tal, let me correct you on that. You now have counsel. I'll hear from your counsel.

MR. TAL: Okay. I'm sorry.

MR. JOSEPH: Your Honor, if it please the Court, I was about to interrupt you in a preliminary matter prior to your ruling on these motions, in that as I came into the case just as of Monday and I began to familiarize myself with it, as you know, it's a complex case. And as I read Your Honor's, I believe it's October 16th order, the one that denies the 30 - - day extension to amend. And at the end of that order, Your Honor states, "Because local counsel has chosen the first alternative," that is, affirming the initial complaint, "The Court will not permit the filing of the second amended complaint without an adequately supported application for leave to do so under Rule 15 of the federal rules."

What I was going to ask, Your Honor, this morning, was that we be permitted to file said motion. And this order seems to contemplate the filing of that motion. And if Your Honor did so permit, it would certainly be premature to rule on. the defendants' motions at this juncture, Judge.

THE COURT: We're here at the appointed hour for hearing on the defendants' motions. And I think it's predictable that before this afternoon is over, some amended pleadings will be in order in any event. However, I have before me no Rule 15 motion to amend. Any Rule 15 motion that you care to file can be filed and responded to, but we will proceed with the motions to dismiss that are presently pending based upon the pleadings as they are. I see no reason not to proceed as contemplated. These motions have been on file a good long time, and this hearing was certainly noticed a good long time ago, so we will

proceed with these motions. If, as I say, matters proceed as I contemplate, plaintiffs will be granted some time to do some more pleading anyway, and as to the claims that remain after this afternoon, further pleadings will certainly be appropriate.

MR. JOSEPH: Your Honor, I guess what I am requesting is that you don't do that. That you let us amend and then have another round of motions. If Your Honor is - - I understand you are not disposed to do that.

THE COURT: That's correct.

MR. JOSEPH: That would be my application, Judge.

THE COURT: That's understood. We're going to proceed on the basis of the pleadings now before the Court and the motions now before the Court.

MR. JOSEPH: Very good, Your Honor. I am not competent to address those motions, Judge. I was working on getting an amendment together and I cannot speak to the Court on those motions.

THE COURT: On any of the presently pending motions?

MR. JOSEPH: No, Judge.

THE COURT: Okay. The Court has heard the counsel for all the plaintiffs state that he is not prepared to address any of the pending motions. The Court will accordingly rule on the presently -- or the Court will indicate its intended rulings on the presently pending motions. And then if any counsel in the case care to be heard - - any counsel for any of the defendants care to be heard to set me straight, in case it is perceived that I am seriously in error on any of these rulings, I will hear from counsel for the defendants. Here are my intended rulings on the pending motions.

And I'm going to go through them in the order that I have previously mentioned and then I'm going to recap so that there will be no misunderstanding as to the Court's contemplated rulings.

The Hogan defendants' motion to strike the affidavit of Moshe Tal is granted.

Turning now to Tiana Douglas's motion to dismiss. The issue which has caught the Court's eye is the issue of limitations as to the state claims. I take the plaintiffs at their word that they have abandoned the claim of conspiracy to condemn by fraud, which leaves the claim for tortious interference. The Court has concluded that this claim is barred by limitations as to the Defendant Tiana Douglas. The plaintiffs argue that the bar of limitations is not applicable because of the previous litigation filed in July of 2000 and dismissed without prejudice in March of 2001. The new claims were asserted on March 13, 2002. I note the contention that the savings clause of 12 O.S. Section 100 saves the plaintiffs' claims - - state law claims against Tiana Douglas from the bar of limitations. However, Tiana Douglas was not a defendant in the original action. Tiana Douglas cites Haught versus Continental Oil Company, 136 P.2d 691, for the proposition that the saving statute applies only if the cause of action is the same and the named parties are substantially the same. The Defendant Tiana Douglas asserts that she is not substantially the same party as the other defendants. The Court agrees. This point, I believe, is fortified by the decision of the Oklahoma Court of Appeals in Nussbaum versus Knobbe, 23 P.3d 302, an Oklahoma Court of Appeals decision from 2001 in which the Oklahoma Court of Appeals noted that the Oklahoma courts have allowed the savings provision of 12 O.S. 100 to apply where a nominal change of defendants occurs such as an executor being substituted for a deceased party or a successor corporation. We simply do not have that situation here, and for that reason, the Court concludes and therefore holds that the

state law claims against the Defendant Tiana Douglas are barred by limitations.

The contention by the Defendant Douglas as to failure to comply with the Governmental Tort Claims Act is more difficult, and it is in fact subject to conflicting rulings by different courts. But it's not necessary to address it in view of the Court's conclusion as to limitations.

And that also renders moot the contention that the plaintiff, the individual plaintiff, Moshe Tal, lacks standing.

As to the Sherman Act claim asserted against the Defendant Tiana Douglas, the Court is not satisfied under the stringent standard applicable under Rule 12(b) (6) that the Court can dismiss the Sherman Act claim against the Defendant Tiana Douglas. All doubts at this stage are to be resolved against the moving party and I can grant a 12(b) (6) motion only if there is simply no reason for doubt as to the lack of merit of the claim asserted in the face of the defense that is asserted. And the record is simply not clear enough for the Court to hold under Rule 12(b) (6) that the Sherman Act claim asserted against the Defendant Tiana Douglas is barred by limitations.

Also, as to the Sherman Act claim, we have a contention by the Defendant Tiana Douglas that the plaintiffs' pleading fails to identify the relevant channels of interstate commerce. That is well—taken and the plaintiffs are granted -- the plaintiffs who will remain at the end of the day today are granted 30 days' leave to amend to correct what the Court has concluded is a clear deficiency, in that, as alleged by the defendants, the Sherman Act claim does not adequately identify the relevant channels of interstate commerce implicated by the Sherman Act claim.

Further, as to the Sherman Act claim, the Defendant Tiana Douglas asserts that the plaintiffs lack standing. The Court

agrees as to the Defendant Moshe Tal and the Defendant Tal Technologies, Inc. This leaves the Sherman Act claim pending only as asserted by Bricktown 2000. In this respect, the Court has concluded that in order to have standing to assert a Sherman Act claim, the plaintiff must assert harm to his or its own business or property and this must be an antitrust injury, not some more generalized injury, as has been thoroughly established by the relevant authorities from the U.S. Supreme Court and the Court of Appeals. The Court concludes on that basis that the. Plaintiff Moshe Tal and Tal Technologies, Inc., both lack standing to assert Sherman Act claims. This applies with respect to all of the defendants, not just Tiana Douglas. This leaves Bricktown 2000 with a Sherman Act claim, as to which leave to amend is granted, provided that the amended pleading is filed within 30 days.

Tiana Douglas also moves to dismiss the RICO claim, asserting defenses based on limitations, failure to allege the necessary elements of a RICO claim and lack of standing. The Court remains unsatisfied that the record shows with sufficient clarity that the limitations defense is meritorious. For that reason, the motion to dismiss is denied insofar as it relies on the statute of limitations. The stringent standard under Rule 12(b) (6) again comes into play and the Court is simply not satisfied that the limitations defense has been established with the certainty required by Rule 12(b) (6)

As to the general allegation of failure to allege the necessary elements, the Court has reviewed the complaint very carefully with the requirements of RICO in mind. I have considered both the contentions made by the plaintiffs and by the defendants, and, in general, the Court is not satisfied with the RICO allegations. The Court has signed and will enter an order for a RICO case statement. I'm going to give the original to the clerk together with five copies. The hour being what it is, this order probably will not be entered today, but the clerk will have the original, which is on top there, Lori, and counsel may get copies

of this order for a RICO case statement. Let me take a look at the order again; let me make sure that it covers one point.

The order for a RICO case statement filed in open court today gives the plaintiffs 20 days within which to file their RICO case statement. I'm amending that manually to say 30 days. I think 30 days is a more reasonable period of time and so I'm amending that by interlineation to say 30 days. The order for RICO case statement will otherwise be self-explanatory. It is entered so that it will provide the Court and all the parties with an adequate basis upon which to evaluate the RICO claim.

The remaining plaintiffs are not confined to the RICO case statement as a format for pleading their claims. So you are granted 30 days from today to both file your RICO case statement and amend your complaint to replead your RICO claims. And I believe that reading both your RICO case statement and your amended complaint together, your RICO claim, as repleaded, together, the Court will be in a much better position to assess the RICO claim. And as I say, the deadline for both the amended complaint and the RICO statement will be 30 days.

The Defendant Tiana Douglas also asserts a lack of standing on the RICO claim. The issue of standing is a bit different under RICO than it is under the Sherman Act. It is my opinion that the Sherman Act standing requirement is a bit more stringent; otherwise stated, the standing requirement under RICO is a bit more relaxed. The Court concludes, however, with no difficulty, that the Defendant Moshe Tal lacks standing to assert a RICO claim. Under RICO, the plaintiff must assert damage to his business. We don't have the follow - - on requirement quite so clearly as we do under the Sherman Act, namely, that under the Sherman Act it must be an antitrust - - type of injury. We don't have that degree of clarity as to what sort of injury must be complained of under RICO.

I'm not going to sustain the motion or grant the motion as to TTI for lack of standing under RICO. I have done so as to TTI under the Sherman Act. I'm not going to grant the motion as to TTI under RICO, but I will, for the benefit of all concerned, state what my concerns are with respect the RICO claim as asserted by TTI, at least as it relates to standing.

At paragraph 134 of the first amended complaint filed on April 1st, TTI states, and I quote, "By reason of the initial TMK/Hogan teams violations and by eliminating the development of the east 26 acres by a genuine and qualified non-party development team (Sooner Investments) whom otherwise would have invested millions of dollars in developing the east 26 acres, the Plaintiff TTI has been damaged by losing prospective advantages, including the lost opportunity of the increased value of its adjacent property, in an amount undetermined at the time of filing of this petition, but no less than $75,000 and therefore entitled to actual damages to be determined by the Court, plus costs and so forth."

In paragraph 135, there is a general allegation that, without any particulara, that TTI has lost at least $7 million. In paragraph 136 there is another general allegation of damage to which there is added an allegation that TTI has lost at least $7 million with no particulars.

The only particulars we have as to the respect in which TTI has been damaged, and these are the allegations from which the Court must determine the issue of standing as to TTI, are those that are set forth that I have quoted verbatim from paragraph 134.

My conclusion is that if we could have a lawsuit from anyone who owns land that was arguably affected by corruption resulting in the development or non-development of adjoining land, we would have to build a new courthouse. I really don't think that establishes standing. But I am not dismissing the

RICO claim as asserted by TTI for lack of standing. I am doing so as to TTI and Moshe Tal under the Sherman Act but not as to the RICO claim. If TTI can plead facts sufficient to establish standing, as has previously been directed by the Court, then the sufficiency of that can be addressed at a later date.

The Defendant Tiana Douglas also asserts issue preclusion and claim preclusion as to all claims asserted by Moshe Tal, individually. The Court agrees, this applies with respect to all defendants. All claims asserted by Moshe Tal are barred by issue preclusion or claim preclusion or both. And in this respect, really the Court need not look further than what's been referred to as the Tal (iii) litigation, that was filed as a Qui Tam case. The Plaintiff Moshe Tal could have asserted all of his personal claims, as well as his Qui Tam claims in that case. Obviously, that's not the only Moshe Tal litigation we have had, but for this purpose, that is certainly the most prominent Moshe Tal litigation we have had. And this Court's conclusion is that he should have asserted any and all claims that he felt he had personally or otherwise in that case or in the other related litigation. It is now simply too late for Plaintiff Moshe Tal, as an individual, to continue to assert these claims and all claims asserted by Moshe Tal are dismissed by this Court on the basis of issue preclusion or claim preclusion or both.

Turning to the Hogan group motion to dismiss. Again, relating to the RICO claim, I am not prepared to dismiss the RICO claim against the Hogan group on the basis of limitations. I don't believe that we have a clear enough basis upon which to hold under Rule 12(b) (6) in that context that the RICO claims are barred by limitations. Other issues as to the RICO claims directed to the Hogan group will be ripe for review I after the amended complaint and the RICO statement are received, bearing in mind that the only remaining RICO F plaintiffs are Bricktown 2000 and TTI.

As to the Sherman Act, as I have stated, concluded that both Moshe Tal and TTI lack standing and the motion to dismiss is granted without leave to amend. I do not believe that the defects, the lack of standing of Moshe Tal and TTI under the Sherman Act are curable and for that reason, leave to amend is denied.

As to tortious interference, the Hogan group asserts that the claim of tortious interference is barred by limitations. The Court does not agree. The motion to dismiss the claims asserted against the Hogan group is accordingly denied to the extent that it is based on limitations. It is granted to the extent that it asserts that Plaintiff Moshe Tal lacks standing. Obviously, that is an additional ground upon which the claims of Moshe Tal, individually, are dismissed.

The defendants contend that Moshe Tal has no standing to bring tortious interference claims because he is only an officer of the entities. The Court has concluded from the materials before the Court that there is no showing of an expectation of a business relationship between the City of Oklahoma City and Moshe Tal individually. For that reason, he does lack standing to assert the tortious interference claim.

The conspiracy to condemn by fraud claim has been abandoned and for that reason it is not necessary to consider the defenses asserted with respect to that claim.

The Hogan group of defendants also assert issue preclusion and claim preclusion. The Court agrees as to the Defendant Moshe Tal, but not as to Bricktown 2000 and Tal Technologies, Inc., which I have referred to as TTI. I have a difficult time tarring, for lack of a better word, tarring those plaintiffs with the brush of Moshe Tal from the Qui Tam suits. It is not possible for the Court to determine from the complaint with a high degree of confidence that the necessary close relationship between Moshe Tal and those entity plaintiffs exists and whether their interests are the same. For that reason, even though I have concluded that

claim preclusion and issue preclusion are fatal to all of the claims asserted in this case by Moshe Tal, I am not able to conclude that with respect to the claims asserted by Bricktown 2000 and Tal Technologies, Inc.

The Court also does not agree with the defendants that the claims asserted are dismissable on the basis that the damages that are pleaded are speculative. That is more aptly addressed at a later stage of the case.

We have a motion to dismiss by TDC Company for lack of personal jurisdiction. That motion is denied. In this case, we have a merger, which I assume was a statutory merger. It appears from the Court, at least for Rule 12(b) (6) purposes, that Torchmark's activities and conduct would be imputed to TDC and that that conduct would be sufficient for the assertion of personal jurisdiction over TDC Company. TDC also asserts that TDC was not in existence at the time of the alleged improper conduct. We have allegations in the existing complaint that are not sufficiently clear for the Court to determine that one way or the other. For that reason, the motion to dismiss of TDC Company is denied insofar as it asserts a lack of personal jurisdiction and insofar as it asserts that TDC was not in existence at the time of the alleged improper conduct. TDC also adopts the other defendants' arguments as made applicable, or as they may be applicable to TDC and the Court's rulings as to those other arguments are the same as they are with respect to the Hogan group and Tiana Douglas.

The Court's ruling is the same as to the motion to dismiss of Stonegate Management Company and Elgin Development Company as to their contention that they may not have claims validly asserted against them because they were not in existence at the time of the alleged improper conduct. That has not been shown with clarity sufficient under Rule 12 (b) (6)

To recap, the Court's intended ruling is as follows:

Judgment is entered against the Plaintiff Moshe Tal on all claims with no leave to amend. The Court has concluded that an amendment would be futile because of the defects which have been noted by the Court and briefed by the defendants are not curable.

As to the Defendant Tiana Douglas, the state law claim for tortious interference is dismissed without leave to amend because it is barred by limitations. That is an incurable defect apparent from the pleading. With respect to the state law claim for tortious interference as to the other defendants, the claim is dismissed without leave to amend insofar as it is asserted by Plaintiff Moshe Tal individually because Moshe Tal, individually, lacks standing.

The state law claim for tortious interference as asserted by Tal Technologies, Inc., and Bricktown 2000 is not dismissed as to any defendants other than the Defendant Tiana Douglas as to whom that claim is dismissed without leave to amend because it is barred by limitations with respect to her.

Addressing now the Sherman Act claim as to all defendants, the motion is denied as to the limitation defense. The motion is granted as to the requirement of pleading relevant channels of interstate commerce with leave to amend granted within 30 days. The Court has concluded as to the Sherman Act claim that the plaintiffs Tal and TTI lack standing. For that reason, their Sherman Act claims are dismissed without leave to amend. The Court, having concluded that the defects are incurable, this leaves Bricktown 2000 as the only Sherman Act plaintiff.

The motions to dismiss the RICO claims are denied as to the limitations defense, granted as to the Plaintiff Moshe Tal for lack of standing without leave to amend, denied as to the plaintiff TTI with respect to the standing issue. The Court does find the substantive RICO allegations to be deficient for the reasons which have been briefed by the Hogan group. The Court

also anticipates, obviously, receiving the RICO case statement. For that reason, the remaining RICO plaintiffs, namely TTI and Bricktown 2000, are granted 30 days within which to amend, to replead their RICO claims and to file the RICO case statement.

The Court, having so stated, and bearing in mind that there will be later junctures in this case at which to raise issues which may be of considerable importance, are the defendants disposed to rise at this point and persuade the Court that it has gone seriously astray on any of these rulings so far?

MR. McVAY: No, Your Honor, not at this time.

THE COURT: Okay.

MR. ROBERSON: Same as well for Tiana.

MS. BATCHELOR: No, Your Honor.

THE COURT: Court will be in recess.

MR. JOSEPH: Your Honor, I just wanted to make one request, Judge. If we could get -- since I'm going to be doing all of this work, Your Honor, and I just came into this case, I can get you the RICO case statement in 30 days. Could I have 45 days for the amendment?

THE COURT: That will be denied. The RICO case statement is at least as challenging as the amendment with respect to RICO.

MR. JOSEPH: I understand that, Judge. The complaint is going to be a lot more detailed, though. Also we - - I guess if you want to add more parties, Judge, when we amend we're going to have to make a motion to add more parties. Is that the correct understanding?

THE COURT: If you want to add parties to this case, you most assuredly will be required to file a motion showing a good reason to do so, yes.

MR. JOSEPH: All right, Your Honor.

THE COURT: Okay. Court will be in recess.

(Proceedings concluded)

CERTIFICATE OF REPORTER

I hereby certify that the foregoing is a true and correct transcript of proceedings.

S/Tracy Washbourne
Tracy Washbourne, RPR, FCRR
United States Court Reporter
Western District of Oklahoma

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) BRICKTOWN 2000, INC.; and	)	
(2) TAL TECHNOLOGIES, INC.,	)	[Filed
	)	12/16/02]
Plaintiffs,	)	
	)	
-against-	)	
	)	Civ.-
(1) RANDOLPH DAN HOGAN; (2)	)	02-324-F
TMK/HOGAN, a/k/a COMMERCIAL	)	
REAL ESTATE SERVICES JOINT	)	
VENTURE;(3) HOGAN PROPERTY	)	
MANAGEMENT, L.L.C.; (4)	)	
BRICKTOWN-TMK/HOGAN	)	
PARKING, L.L.C.; a/k/a	)	
BRICKTOWN-SMC/HOGAN	)	
PARKING; (5) BRICKTOWN TMK/	)	
HOGAN ENTERTAINMENT, L.L.C.;	)	
a/k/a BRICKTOWN	)	
ENTERTAINMENT, L.L.C.; (6) MARK	)	
D. ELGIN; (7) STONEGATE	)	
MANAGEMENT CO., L.L.C. (8)	)	
ELGIN DEVELOPMENT COMPANY,	)	
L.L.C.; (9) TDC COMPANY, L.L.C.;	)	
(10) TIANA P. DOUGLAS,	)	
	)	
Defendants.	)	

SECOND AMENDED COMPLAINT

1. Plaintiffs Bricktown 2000, Inc. ("BT-2000"); and Tal Technologies Inc. ("TTI"), as and for their Complaint against the Defendants, state and allege as follows:

INTRODUCTION

2. Plaintiffs bring this action to recover damages for losses they have suffered as a result of the Defendants' participation in a fraudulent Scheme to defraud the Plaintiffs of their business-development rights, and ultimately to gain title to properties acquired with public funds. Certain accomplices of the Defendants herein are local public officials who abused their political power in order to manipulate and corrupt an Oklahoma City Trust, the Oklahoma City Urban Renewal Authority ("Urban Renewal"), and Oklahoma City Council ("City Council") which entities Plaintiffs designated as the 18 U.S.C.§1961 (4) "Enterprise" herein. Defendants' 18 U.S.C. §1961 "predicate acts" are set out at Section "X", infra.

3. As is more fully stated below, the Defendants conspired with each other to carry out a fraudulent Scheme to (i) rig the Oklahoma City public bidding process so as illegally to obtain valuable development rights in a Metropolitan Area ("MAPS") project authorized by Oklahoma City voters in an October 1993 election; and in so doing further to (ii) prevent Plaintiffs, despite the manifestly superior qualifications of Plaintiffs and their joint venture partner, The Cordish Company, from being chosen as the City's developer for said project; and finally to (iii) acquire legal title to publicly acquired properties. Defendants' Scheme employed numerous fraudulent means, including intentionally and fraudulently representing that Defendant TMK/Hogan was backed by the $11 billion Torchmark Corporation ("Torchmark Misrepresentation"), conspiring with both their public official accomplices and other private accomplices, inter alia, to condemn valuable properties belonging to Plaintiff TTI and thereafter to transfer the said properties and other publicly acquired properties to Defendants' private use and control.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over the First and Second Causes of Action of this complaint pursuant to 18 U.S.C. §1964(c); 15 U.S.C. §15(a) and 28 U.S.C. §1331. Defendants' predicate acts, for purposes of 18 U.S.C. §1961, arose under 18 U.S.C. §1341 and 18 U.S.C. §1343. This Court has pendent subject matter jurisdiction over the remaining causes of action alleged in this complaint.

5. Venue herein is proper under 18 U.S.C. §1965(a), and 28 U.S.C. §1391(b). Venue is also proper under 15 U.S.C. §22. A substantial part of Defendants' acts giving rise to Plaintiffs' claims occurred within this judicial district and the properties that are the subject of this action are situated within this judicial district.

Parties

6. Plaintiff Bricktown 2000, Inc. ("BT-2000") is a corporation existing under and by virtue of the laws of Oklahoma, with its principal business located in Oklahoma City, Oklahoma. BT-2000 was defrauded by Defendants' interference with — and copying — BT-2000's $160 million south Bricktown development project with nationally known urban developer David Cordish, including via bid rigging and other illegal activities more fully described below.

7. Plaintiff Tal Technologies Inc. ("TTI") is a corporation existing under and by virtue of the laws of Oklahoma, with its principal business located in Oklahoma City, Oklahoma. TTI owned approximately five (5) acres in the south Bricktown area, and had a contract with BT-2000 wherein TTI's properties would be leased to BT-2000 for CCBT's Bricktown

development. Plaintiff TTI was defrauded and damaged by the Defendants in that Defendants fraudulently converted to their own use and profit 1.4 acres of Plaintiff TTI's property.

8. Defendant Dan Randolph Hogan ("Hogan") is a United States citizen, and a resident of Oklahoma County, Oklahoma. Hogan is a principal of Defendants TMK/Hogan; Hogan Property Management; Bricktown-TMK/Hogan Parking; and Bricktown-TMK/Hogan Entertainment. Pursuant to and in furtherance of Defendants' fraudulent Scheme to defraud Plaintiffs, Defendant Hogan made the majority of Defendants' intentionally fraudulent 18 U.S.C. §1341 mailings and 18 U.S.C. §1343 electronic broadcasts in support of Defendants' fraudulent Torchmark Misrepresentation to Oklahoma City officials.

9. Defendant Mark D. Elgin ("Elgin") is a United States citizen and a resident of Alabama. Defendant Elgin is a partner with Hogan in a number of the Hogan family's entities and a principal of Defendants TMK/Hogan, Stonegate Management Co. L.L.C., Elgin Development Co. L.L.C. and TDC Company L.L.C. Defendant Elgin furthered Defendants' fraudulent Scheme and Torchmark Misrepresentation, inter alia, by creating both Defendants Elgin Development and TDC Company, L.L.C. in 1999 in order retroactively to cover up and conceal said Torchmark Misrepresentation by fraudulently representing that Defendant Elgin Development is the owner of Defendant TDC and that TDC wholly owns Defendant Stonegate, the true 50% partner of Defendant Hogan Property in Defendant TMK/Hogan.

10. Defendant TMK/Hogan ("TMK/Hogan") is an Oklahoma partnership owned by Defendants Hogan Property Management L.L.C. and Stonegate Management Company L.L.C. It manages the property, 204 N. Robinson, Oklahoma City, in which property Urban Renewal became a tenant, at a below-market rent, approximately six months prior to Urban

Renewal's April 24, 1996 Request for Proposals describe in ¶¶ 36, et seq. of this Second Amended Complaint. It is managed by its two principals, Defendants Hogan and Elgin. TMK/Hogan has been doing business in Oklahoma since January 1, 1996. Upon information and belief, on or about November 22, 2000 TMK/Hogan changed its name to "Commercial Real Estate Services Joint Venture". TMK/Hogan may also be or have been doing business as "Stonegate/Hogan". Defendant TMK/Hogan, inter alia, is the entity put forth by Defendants as the Torchmark-backed partnership obtaining the Parking and Development Contracts described at ¶¶ 127 and 159 of this Second Amended Complaint.

11. Defendant Hogan Property Management, L.L.C. ("Hogan Property"), is a limited liability corporation existing under and by virtue of the laws of Oklahoma. It is 50% partner in Defendant TMK/Hogan. Defendant Hogan Property participated in Defendants' fraudulent Torchmark Misrepresentation and is the entity partnered with Urban Renewal Commissioner Fred Jones Hall in business ventures including the Lake Hefner project described at Section "V", infra.

12. Defendant Bricktown-SMC/Hogan Parking, L.L.C. ("Hogan Parking"), is a limited liability corporation existing under and by virtue of the laws of Oklahoma. Upon information and belief, on or about April 14, 2000, Bricktown-TMK/Hogan Parking, L.L.C. changed its name to Bricktown-SMC/Hogan Parking, L.L.C. Defendant Hogan Parking assisted Defendant TMK/Hogan in obtaining Defendants' interest in Urban Renewal via the aforementioned Parking Contract.

13. Defendant Bricktown-TMK/Hogan Entertainment, L.L.C. ("Hogan Entertainment"), is a limited liability corporation existing under and by virtue of the laws of

Oklahoma. Upon information and belief, on or about April 14, 2000, Bricktown-TMK/Hogan Entertainment, L.L.C. changed its name to Bricktown Entertainment, L.L.C. Defendant Hogan Entertainment assisted Defendant TMK/Hogan in obtaining Defendants' interest in Urban Renewal via the aforementioned Development Contract.

14. Defendant Stonegate Management Company, L.L.C. ("Stonegate"), is a limited liability corporation existing under and by virtue of the laws of Alabama, and has been doing business in Oklahoma. Stonegate was created on or about November 22, 1999. On or about November 24, 1999, Defendants merged Stonegate Management Corporation, which was in existence on or before January 1, 1996, the date on which TMK/Hogan began doing business in Oklahoma, with Defendant Stonegate. By facilitating Defendants' Torchmark Misrepresentation, Stonegate assisted Defendants in obtaining Defendants' interest in Urban Renewal via the aforementioned Development Contract.

15. Defendant Elgin Development Company, L.L.C. ("Elgin Development"), is a limited liability company existing under and by virtue of the laws of Alabama, and has been doing business in Oklahoma. Defendant Elgin created Defendant Elgin Development on or about June 29, 1999, and is its president and manager.

16. Defendant TDC Company, L.L.C. ("TDC"), is a limited liability company existing under and by virtue of the laws of Alabama, and has been doing business in Oklahoma. Defendant Elgin created Defendant TDC on or about November 22, 1999. On or about November 24, 1999, Defendant Elgin merged Torchmark Development Corporation, an Alabama corporation created on or about June 10, 1988, with Defendant TDC. Defendants' Torchmark Misrepresentation stated that Defendant TMK/Hogan is a 50/50 joint venture between Defendant Hogan Property and Torchmark Development

Corporation, and not between Defendant Hogan Property and Defendant Stonegate, as the official Oklahoma Secretary of State's record shows.

17. Defendant Tiana P. Douglas ("Douglas") is a citizen of the United States and a resident of Oklahoma County, Oklahoma. She is a former assistant City manager, and during the relevant period covered by this Second Amended Complaint, defined as January 1, 1992 through the present date, served as executive director of Urban Renewal. Defendant Douglas additionally serves as executive director and/or manager of the Second Century entity described in ¶ 80 of this Second Amended Complaint. Through, inter alia, Defendant's position and influence with Urban Renewal, Defendant's husband and an entity founded by him, Triad Design Group, have obtained substantial funds pursuant to the MAPS program described in this Second Amended Complaint, as well as remunerated consulting positions with the City government. Defendant Douglas further (i) engaged in numerous 18 U.S.C. §1341 mailings and 18 U.S.C. §1343 wire fraud in support of Defendants' fraudulent Torchmark Misrepresentation; and (ii) played a central role in the bid rigging and monopoly conspiracies preventing Plaintiffs from being selected as Bricktown developer.

FACTS COMMON TO ALL CAUSES OF ACTION

A. 1993 MAPS Ordinance: Bricktown Canal and Parking

18. On or about October 18, 1993 the City Council passed an ordinance proposing a five-year increase in the City sales tax, ending December 31, 1998, and dedicated to the City's Metropolitan Area Projects ("MAPS"). Oklahoma City voters approved the said sales tax increase on or about December 13, 1993.

19. The City and a MAPS Oversight Board created by the said ordinance approved an initial MAPS Master Plan ("Master Plan") on or about January 30, 1995.

20. The said Master Plan concerned approximately 25 acres in the south portion of the City's Bricktown District ("Bricktown"), from Reno Avenue to U.S. Interstate 40 and from E.K. Gaylord Avenue to the West side of Stiles Avenue. ("West 25 Acres").

21. Previously, the Oklahoma Urban Renewal Authority ("Urban Renewal") sought development of approximately 26 acres owned by it to the East of the West 25 Acres, from Stiles Avenue to Lincoln Boulevard, and from Reno Avenue to the East side of Plaintiff Tal's grain elevator, ending at the North side of the Canadian River ("East 26 Acres").

22. The Master Plan's first principal improvement was to consist of a canal, running through both the West 25 Acres and the East 26 Acres.

23. The Master Plan's second principal improvement was to consist of 1,200 additional parking spaces in the West 25 Acres.

24. The MAPS Ordinance further dedicated the MAPS tax funds for the following nine elements:

(i). The aforementioned canal;

(ii). A Bricktown BallPark (hereinafter "the BallPark");

(iii). Renovation of the Civic Center Music Hall;

(iv). Renovation of the Myriad Convention Center;

(v). A metropolitan Learning Center;

(vi). A new Indoor Sports and Convention Arena;

(vii). Renovation of the Oklahoma City Fairgrounds;

(viii). Canadian River dams, turning a large section of that river into lakes; and

(ix). An improved transportation system.

~~B. Plaintiffs' 1995 Bricktown Project Proposal~~

25. On or about June 7, 1995 Plaintiffs developed their own Bricktown Project Proposal ("Plaintiffs' 1995 Proposal"), intended in part to solve the City's contemporaneous projection of a $10 million to $15 million shortfall in the City's MAPS budget. Plaintiffs' 1995 Proposal included the following principal elements:

(i.) Plaintiff BT-2000, formed June 7, 1995, will finance canal construction in the West 25 Acres, including both necessary property acquisitions and refunds to the City of any funds already expended by the City on the project;

(ii.) BT-2000 will construct in the West 25 Acres a multi-level parking facility for at least 2,000 vehicles, expandable to 3,0000 vehicles, with a guarantee to the City to charge no more than City downtown parking rates, and with a guarantee of the construction of additional parking as the facilities next mentioned are built; and

(iii.) BT-2000 will additionally construct additional facilities including a shopping center, a hotel,

restaurants and various entertainment venues for all ages.

26. On or about January 18, 1995 Plaintiffs met to propose their 1995 Proposal with the City's Assistant City Manager and MAPS Director, who requested that Plaintiffs provide further information in support of their said Proposal.

27. Subsequent to the aforesaid January 18, 1995 meeting with City officials, Plaintiffs hired professional consultants and advisers and began negotiations to purchase privately held properties in the project area.

28. The West 25 Acre area property owners, with one minor exception, were agreeable to Plaintiffs' purchase of their properties, provided that the City consent to the said purchase.

29. Plaintiffs prepared a public offering for the project, and filed a BT-2000 Prospectus with the United States Securities and Exchange Commission ("SEC"). This proposed public offering was an added incentive for project area property owners to sell their properties to Plaintiffs, because Plaintiffs offered shares in the public offering in addition to cash for their properties.

30. On or about October 27, 1995 the City's MAPS Director and Coordinator, Mayor, City Manager and Assistant City Manager expressed favorable views of Plaintiffs' 1995 Proposal. Mayor Ronald Norick ("Mayor Norick") suggested that Plaintiffs continue working with the City's Municipal Counselor in view of finalizing a contract.

31. The City, in a March 29, 1996 letter from its Municipal Counselor's office, conditioned its sale to Plaintiffs of Parcel 8010, covering 15 acres in the project area, on Plaintiffs' funds "reimburs[ing] the MAP's limited-purpose tax

fund for all of the costs associated with the purchase of Parcel 8010".

32. On or about April 1, 1996, BT-2000 submitted to the City's Legal Department, Mayor Norick, City Manager and MAPS Manager a Contract ("April 1, 1996 Contract") in accordance with the City's March 29, 1996 legal approval of the said property acquisition in Plaintiff's proposal. On or about April 2, 1996 Mayor Norick recommended that the City Council approve the completion of the negotiations with Plaintiffs on the terms submitted by Plaintiffs.

33. During the last two weeks of April 1996 Mayor Norick requested that Plaintiffs demonstrate the financial feasibility of their 1995 Proposal. On May 9, 1996, Plaintiffs provided Mayor Norick with all requested financial information including a detailed Business Plan demonstrating both the feasibility and profitability of Plaintiffs' Bricktown Project Proposal.

34. On or about June 6, 1996 Mayor Norick informed Plaintiffs that the City would not close on the April 1, 1996 Contract negotiated with Plaintiffs without first going through a public bidding process.

~~C. Defendant TMK/Hogan's Fraudulent "Torchmark" Bid~~

35. On or about January 1, 1996, Defendants Hogan, Elgin, Hogan Property and Stonegate formed Defendant TMK/Hogan.

36. On or about April 24, 1996 Urban Renewal authorized a Request for Proposals ("RFP") for development of the East 26 Acres ("April 24, 1996 RFP"). The said RFP was not

issued under MAPS authority, but instead under that of Urban Renewal, with whom final approval of the developer was to rest.

37. Mayor Norick assured Plaintiffs that they could participate in development of the West 25 Acres through a future and different RFP, issued by the City Manager, whose final approval would rest with the City Council. Plaintiffs therefore determined not to respond to the Urban Renewal April 24, 1996 RFP.

38. On or about May 21, 1996, Defendant Hogan and Hogan property offered and caused Urban Renewal Commissioner Fred Jones Hall ("Hall") to become a 50% partner in said Defendants East Wharf development described in Section "W" of this Second Amended Complaint in exchange, inter alia, for Hall's vote supporting the selection of Defendant TMK/Hogan as developer of the East 26 Acres pursuant to the April 24, 1996 RFP and future RFP's issued by Urban Renewal.

39. On or about July 26, 1996, in a letter from Defendant Hogan to Urban Renewal, Defendants Hogan, Elgin, Stonegate, TDC and TMK/Hogan submitted their initial proposal in response to the April 24, 1996 RFP. Defendants' said proposal offered solely a thirty-screen cinema complex. The said thirty-screen cinema complex was not economically justified and was solely a ploy by Defendants to acquire the East 26 Acres for their sole use and profit, financed, inter alia, by City subsidies that Defendants intentionally and fraudulently planned to obtain through their accomplices in local government positions, principally Defendant Douglas.

40. The April 24, 1996 RFP required that each proposed developer demonstrate to Urban Renewal both its financial qualifications and development experience.

41. Defendant TMK/Hogan's aforesaid July 26, 1996 letter to Urban Renewal annexed both a "Real Estate

Development and Financial Qualifications and Experience" Statement and an "Addendum to Redeveloper's Statement of Qualifications and Financial Responsibility", both of which documents willfully and intentionally stated Defendants' Torchmark Misrepresentation, intentionally and fraudulently representing to Urban Renewal that Defendant was an Oklahoma general partnership composed of two partners: (a) Defendant Hogan Property; and (b) Alabama-based Torchmark Development Corporation, a wholly-owned subsidiary of Torchmark Corporation ("Torchmark"), a Fortune 100 company listed on the New York Stock Exchange.

42. Defendants' addition of the symbol "TMK" to the name of Defendant TMK/Hogan was willfully and fraudulently intended by Defendants to mislead the Urban Renewal Commissioners other than Defendant Douglas, Fred Jones Hall ("Hall") and Larry Nichols ("Nichols") into believing that Torchmark stood behind Defendant's July 26, 1996 proposal, because "TMK" is the symbol for Torchmark on the New York Stock Exchange.

43. Hall is a partner of Defendant Hogan in, inter alia, the Lake Hefner "East Wharf" project described at Section "W" of this Second Amended Complaint and another business deal in Edmond, Oklahoma, and Oklahoma Turnpike Commissioner. Mayor Norick, inter alia, supported Hall's nomination as Turnpike Commissioner to State authorities. Defendants Hogan and TMK/Hogan influence Hall, inter alia, via the said two projects.

44. Nichols is president and principal stockholder of Devon Corporation, owner of the Mid-America Plaza Building in downtown Oklahoma City, whose leasing agent is Defendant Hogan. Defendants Hogan and TMK/Hogan influence Nichols, inter alia by managing the said building at a rate well below

market. Nichols obtained the said property from Urban Renewal at a fraction of market rate, after a condemnation by Urban Renewal, which condemnation, upon information and belief, was engineered by Defendants Douglas and Hogan, Urban Renewal Chairman Stanton Young and Urban Renewal Commissioners David Jones and Nichols.

45. In further pursuit of Defendants' fraudulent Scheme, Defendant TMK/Hogan's aforesaid July 25, 1996 proposal willfully and intentionally, in a further attempt to mislead the Urban Renewal Commissioners other than Hall and Nichols into believing that one of its partners was Torchmark, additionally submitted Torchmark's 1995 annual report and associated financial statements. Defendants submitted no financial information to Urban Renewal for either partner in Defendant TMK/Hogan, whether real or purported.

46. In furtherance and intentional pursuit of Defendants' fraudulent Scheme, Defendant Hogan on or about July 26, 1996 sent a letter to Urban Renewal including a Redeveloper's Statement for Public Disclosure and Redeveloper's Statement for Qualifications and Financial Responsibility, Form H-6004. Said Form H-6004 republished Defendants' fraudulent statement that Defendant TMK/Hogan's 50% partner was Defendant TDC, identified by Defendants therein as "a wholly owned subsidiary" of Torchmark.

47. Defendant TMK/Hogan's two partners, as of 1996, were Defendants Hogan Property and Stonegate, and not Defendant Hogan Property and any entity affiliated with Torchmark, nor with Torchmark.

48. On or about September 23, 1996 Defendants Elgin and Stonegate mailed from Alabama to Defendants Hogan and TMK/Hogan in Oklahoma City, in further support of

Defendants' Torchmark Misrepresentation an Addendum to Developer's Statement of Qualification and Financial Responsibility including a copy of Torchmark's 1995 SEC Form 10K, showing that Torchmark possessed approximately $9.3 billion in assets. Defendant Hogan, upon information and belief, thereafter delivered the said Addendum to Urban Renewal.

49. Defendants willfully and intentionally submitted Defendant TMK/Hogan's July 26, 1996 development proposal to Urban Renewal with the intent to damage and injure a competing developer, the Sooners, who had proposed, inter alia, to invest approximately $600,000.00 for a lock at the point where the lower Bricktown canal was to meet the higher canal, in addition to various venues such as motels, restaurants and other recreational facilities.

50. Shortly after receiving Defendant TMK/Hogan's aforementioned September 23, 1996 Addendum, Urban Renewal, based on Defendants' aforementioned willful and intentionally fraudulent declarations and submissions respecting Torchmark, designated Defendant TMK/Hogan as developer for the East 26 Acres. On or about March 19, 1997, based on Defendants' same willful and intentional fraudulent declarations and submissions respecting Torchmark, Urban Renewal selected Defendant TMK/Hogan as developer for the East 26 Acres, and gave Defendant 120 days to negotiate a contract with Defendant Douglas.

D. Plaintiffs' CCBT Development Partnership

51. Because of Mayor Norick's representations referred to in ¶ 37 of this Second Amended Complaint, Plaintiffs continued negotiating with City authorities to develop the West 25 Acres, then controlled by the Oklahoma City's MAPS Board and the City's Riverfront Authority ("Riverfront Authority").

52. Based on their prospective business relationship with the City, Plaintiffs attracted investors, including the well-known national developer The Cordish Company. Bricktown-2000 formed a joint venture with The Cordish Company to develop the Bricktown area, known as CCBT.

53. David Cordish ("Cordish"), The Cordish Company's CEO, was the first director of the United States Department of Housing and Urban Development Action Grant ("UDAG") program. The Cordish Company's pre-1997 development experience included the Rainbow Center in Niagara Falls, New York; Trappers Alley in Detroit; Charleston Place in Charleston, South Carolina; Trolley Square in Salt Lake City; Bayou Place in Houston; Yale Omni New Haven, New Haven, Connecticut; and the Power Plant in Baltimore Harbor.

54. On or about May 20, 1997 Cordish sent a letter to Mayor Norick announcing the CCBT partnership. On or about May 21, 1996 Plaintiffs publicly revealed the CCBT partnership, including a commitment to invest $160 million to $200 million in Bricktown. News of the CCBT joint venture appeared in all Oklahoma City media.

E. Defendants Offer to "Exchange" East 26 for West 25 Acres

55. The MAPS Master Plan was to restrict the navigable portion of the Bricktown canal to the West 25 Acres, because of a seven-foot drop in elevation in the East 26 Acres. The West 25 Acres' navigability made them far more desirable for development than the East 26 Acres.

56. In further pursuance of Defendants' fraudulent Scheme, Defendants Hogan and Douglas during the latter part of 1996 and early part of 1997, approached City officials and the Riverfront Development Authority with an offer to "exchange" Defendant TMK/Hogan's development rights in the East 26

Acres for development rights to the City-owned West 25 Acres. Defendants so acted, upon information and belief, after gaining knowledge of Plaintiffs' business plans and expectation of $200 million in profits referred to in ¶ 33 of this Second Amended Complaint.

57. Defendants' intent in offering the said "exchange" of their rights to the East 26 Acres for rights to the West 25 Acres was that Defendant TMK/Hogan be granted rights to the West 25 Acres without being required to submit to public bidding ,and additionally to gain rights to the more desirable West 25 Acres, leaving the lesser desirable East 26 Acres to Plaintiffs.

58. The City Council and Riverfront Authority both rejected Defendants' said "exchange" proposal.

F. Mayor Norick Reveals $100,000.00 Annual Bribe

59. At a meeting in mid-March 1997 Mayor Norick requested that Cordish agree to renegotiate the April 1, 1996 Contract referred to in ¶¶ 30-34 of this Second Amended Complaint.

60. During the same mid-March 1997 meeting Mayor Norick requested former Plaintiff Tal ("Tal"), who was known to Mayor Norick as a manufacturer of fuel additives for racing cars, to sponsor the Mayor's son's racing car. Tal is the founder and president of the two corporate Plaintiffs BT-2000 and TTI.

61. Mayor Norick additionally showed Tal a photograph of the Mayor's son's vehicle with the name of its main sponsor on the vehicles, and told Tal that the said sponsor gave the Mayor and/or the Mayor's son $100,000.00

or more annually. The said sponsor of the Mayor's son's racing car is Urban Renewal Commissioner Hall.

G. Defendants Take 51 Acres, Including Plaintiff's Property

62. In or about March 1997, after the City Council and Riverfront Authority rejected Defendants' "exchange" proposal, Defendants, in further pursuance of their fraudulent Scheme, determined that Defendant Douglas, in her position as Urban Renewal executive director, would induce Urban Renewal to have the City transfer ownership of the West 25 Acres to Urban Renewal; Urban Renewal would cancel Defendant TMK/Hogan's previous award of development rights to the East 26 Acres; Urban Renewal would publish a new RFP; and Urban Renewal would select Defendant TMK/Hogan as developer as for the entire 51 acres.

63. In the said Scheme, 1.4 acres owned by Plaintiff TTI were central to the development of the West 25 Acres, because they were directly across from, and provided the only frontal, cross-canal access to, the MAPS Ballpark, scheduled by the City to open in or about April 1998.

64. Two days after Tal rejected Mayor Norick's request for a bribe, on or about March 25, 1997, Oklahoma City Municipal Counselors filed a petition with the Oklahoma County State Court to condemn Plaintiff TTI's said 1.4 acres.

65. On June 12, 1997 the State Court's selected commissioners in the City's condemnation case against Plaintiff TTI appraised Plaintiffs' 1.4 acres of canal-front property at $50,000.00. Plaintiff filed an Exception to the commissioners' report.

66. Mayor Norick and City Manager Donald Bown additionally represented to Plaintiffs that because of the strength of Plaintiffs' proposal to invest $160 million to $200 million without requiring any public assistance, CCBT would be selected for at least part of the Bricktown project despite the condemnation proceeding, and that the condemnation would be cancelled. Mayor Norick also represented to Plaintiffs that he had not notified other City officials of his request to renegotiate the City's April 1, 1996 Contract with Plaintiffs.

67. On or about November 4, 1997, Defendant Douglas caused the City to transfer legal title to all of the West 25 Acres, with the exception of a single parcel belonging to the U-Haul Corporation, and including Plaintiff TTI's 1.4 acres, to Urban Renewal.

68. During the last week of April 1997, Mayor Norick and City Manager Bown represented to Plaintiffs that the City would not continue to renegotiate the April 1, 1996 Contract unless Plaintiffs would commit to providing 1,200 parking spaces required by the MAPS Master Plan for the West 25 Acres prior to the April 1, 1998 opening of the City's new BallPark..

69. On or about May 15, 1997, Mayor Norick further requested that Cordish confirm his joint venture with Plaintiffs in writing. On or about May 20, 1997, in the letter to Mayor Norick referred to in ¶ 54 of this Second Amended Complaint, Cordish so confirmed his joint venture with Plaintiffs.

H. Defendants' Local Allies: OKC Athletic

70. On or about May 20, 1997, Bricktown property owners Don Karchmer ("Karchmer") and Jim D. Brewer ("Brewer) requested that the City Council approve their

construction of the 1,200-space parking facilities described in ¶ 24 of this Second Amended Complaint. Karchmer and Brewer represented to the City Council that they had an agreement with Defendant TMK/Hogan and OKC Athletic Club, L.P. ("OKC Athletic"), owner of the Oklahoma Redhawks (now 89ers) Class AAA baseball team, to construct the said facilities.

71. OKC Athletic is an Oklahoma limited partnership whose partners include Fred Jones Industries, a partnership, owned and/or controlled by Urban Renewal Commissioner Hall. It is a one-third partner in the December 16, 1997 Parking Agreement referred to in ¶ 127 of this Second Amended Complaint. The other two partners in the said Parking Agreement are Defendant TMK/Hogan and BAP, an entity whose partners include Karchmer, Brewer and James Tolbert III, president of the Bricktown Association referred to in ¶ 134 of this Second Amended Complaint. Tolbert is also chairman of the Myriad Garden Trust referred to in ¶ 24 of this Second Amended Complaint; and Urban Renewal Commissioner since late 1998.

72. On or about May 21, 1997 Brewer represented to Tal that his "group" could increase the City's compensation for Plaintiff TTI's 1.4 acres in exchange for 10% of the compensation award. Brewer thereafter further represented that CCBT's development proposal would receive City approval in exchange for 10% of CCBT's project revenues. Brewer stated to Tal that if CCBT did not provide 10% of its project revenues, Plaintiff TTI's condemnation would not be cancelled; Plaintiff TTI would not receive any increased compensation for its 1.4 acres; and CCBT's project proposal would not receive City approval.

73. Tal refused Brewer's request for the aforesaid 10% of CCBT's project revenues and 10% of the condemnation award.

74. On or about May 23, 1997 Mayor Norick requested that Tal attend a May 27, 1997 City Council meeting to present CCBT's development project to the City Council.

75. Following the said May 27, 1997 City Council meeting, Mayor Norick again requested Plaintiffs' assurances that CCBT would be able to construct 1,200 parking spaces that were the MAPS Plan's second principal element in time for the opening of the City's BallPark.

76. Cordish told Mayor Norick that CCBT would provide the required parking, at no cost to the City, based on a temporary contract. Cordish in a letter dated May 28, 1997 provided the requested written commitment, stating:

(i). CCBT will build, at its own expense, the 1,200-space parking facilities, with a temporary, two- to three-year lease to the City;

(ii). CCBT will guarantee the opening of the said 1,200-space facility by March 31, 1998;

(iii). If for any reason the City's 1,200-space facility is unavailable, due to ongoing procedures such as condemnations, CCBT will build any required supplementary parking on Plaintiff TTI's property;

(iv). If CCBT is the City's chosen developer for Bricktown, the temporary lease will be converted into the permanent development package; and

(v). If CCBT is not selected as the City's chosen developer for Bricktown, CCBT will turn the parking facilities over to the City, at no cost to the City.

77. On or about October 7, 1997 Mayor Norick inserted on the City Council agenda a lease with OKC Athletic

for the City's BallPark allowing the addition of $10 million of MAPS tax funds to OKC Athletic's income. Mayor Norick did so without obtaining the review and recommendations of the MAPS Board, which review and recommendations were required under the December 1993 MAPS ordinance. Mayor Norick informed the Council members that their refusal to approve the OKC Athletic lease would lose the City the 89ers baseball team.

I. Defendants Consolidate All 51 Acres Under Urban Renewal

78. In further pursuit of Defendants' fraudulent Scheme, Defendant Douglas conspired with Defendants Hogan and TMK/Hogan to induce Urban Renewal to hire RTKL Associates ("RTKL"). RTKL, according to Defendants' Scheme, issued a report, dated on or about March 23, 1997 containing a development "Action Plan" putting into de facto effect Defendants' aforementioned "Exchange" proposal, i.e., relocating Defendant TMK/Hogan's initial thirty-screen theater plan for the East 26 Acres to the West 25 Acres. According to Defendants' fraudulent Scheme, this said RTKL "Action Plan" became a mandatory guideline for any RFP proposal.

79. In further support of Defendants' fraudulent Scheme, Defendant Hogan, on behalf of Defendant TMK/Hogan, on or about July 17, 1997 sent a letter to Defendant Douglas, stating, inter alia, that "[I]n response to" the said Action Plan Defendant TMK/Hogan "agree[ed]" to transfer its cinema-complex proposal from the East 26 Acres to the West 25 Acres. In the said letter, Defendants stated, inter alia:

> "In addition to our previously submitted Proposal, attached is an Agreement in Principle between TMK/Hogan, OKC Athletic Club (89ers) and Bricktown

Owners Association to accomplish the objectives of developing not less than 1,200 interim and long term parking spaces. Please note that it is the goal of the to be formed partnership to have the subject parking areas completed on or before February 28, 1998".

80. Defendants Hogan and Douglas provided funding for RTKL's said study via an entity called Second Century, Inc. ("Second Century"). Through Second Century, Defendants received $50,000.00 from the City and $60,000.00 from private entities or individuals including Defendant TMK/Hogan and Urban Renewal Commissioner Hall.

81. The said RTKL "Action Plan" recommended relocating the completely economically unfeasible proposed thirty-screen cinema complex in Defendant TMK/Hogan's 1996 proposal from the East 26 Acres to the West 25 Acres, where it was barely economically feasible.

82. Defendant Douglas thereafter, at a June 24, 1997 meeting of the City Council used the said RTKL report to induce the Council to approve Council Item VIII.H, an amended Urban Renewal Plan giving Urban Renewal the power to select developers and submit its recommendations to the City Council for its final approval. In the said amended Plan, the West 25 Acres were consolidated with the East 26 Acres.

83. On or about June 25, 1997 the Daily Oklahoman quoted Defendant Douglas as stating that "her agency will discuss a proposal to build parking spaces from a group that includes Bricktown merchants, the owners of the Oklahoma City 89ers baseball team and developer Randy Hogan". The said article also stated that "Bricktown partner . . . Karchmer said he

is confident the Hogan/Bricktown/89ers group will be given permission to build the lots within two weeks". The Bricktown 89ers group thus referred to OKC Athletic, the entity referred to at ¶¶ 70 and 71 of this Second Amended Complaint.

84. On or about June 26, 1997, Urban Renewal issued its public RFP for development of the 51 acre consolidated under Council Item VIII.H ("June 26, 1997 RFP").

85. On or about June 26, 1997 Urban Renewal sent a copy of said RFP to Plaintiff Bricktown 2000. The said RFP announced only an abnormally short deadline for submission of proposals, July 17, 1997 at 11:00 a.m., and included none of the usual dates for oral presentation, review committee meetings, or supplemental presentations.

86. On or about June 27, 1997, the day following Urban Renewal's June 26, 1997 RFP and twenty days prior to the July 17, 1997 deadline under the said RFP, the Daily Oklahoman quoted Defendant Douglas as again stating that "her agency will discuss a proposal to build parking spaces from a group that includes Hogan, merchants and the owners of the Oklahoma City 89ers baseball team".

J. CCBT'S July 17, 1997 Project Proposal

87. In response to Urban Renewal's June 26, 1997 RFP, CCBT on July 17, 1997 provided Urban Renewal with its Response to the said RFP ("CCBT's July 17 Response"). Defendant Douglas announced Urban Renewal's official acceptance of the said Response.

88. The CCBT July 17, 1997 Response included extensive color renderings of Plaintiffs' proposed development, numerous Cordish Company press clippings and a biography of CCBT's local and out-of-state architectural firms. The said

Response was a professional publication one hundred ninety-five pages long.

89. The major elements in CCBT's July 17, 1997 Project Proposal were:

(i). In the initial phase, a four-story, U-shaped shopping plaza with two levels of retail store space, a canal extension in a turn basin in the center of the building, and third and fourth levels with additional retail and commercial space, conference centers, meeting rooms and general office space;

(ii). Attached to the south side of the aforementioned shopping and office complex, an 850-space parking facility, with on the structure's upper floors a multi-screen cinema complex;

(iii). The Master Plan having been to construct the Bricktown canal out of concrete in the West 25 Acres but out of vinyl lining in the East 26 Acres, CCBT included, in the project's second phase, a "lake node", including raising the East canal seven feet, connecting it with the navigable West canal and constructing it out of concrete. Excavation material from the lakes would be used to elevate the lower canal and fill surrounding lands, creating increased development potential. CCBT also proposed a waterfall for the canal's termination point.; and

(iv). Subsequent to the second phase, CCBT proposed a 400-500-room hotel, including banquet rooms, ballrooms, commercial service facilities and office space, located adjacent to the shopping plaza, at the west end of CCBT's canal extension. CCBT also planned a "Country Music Theme Complex",

including an outdoor theater, located on a bend of the canal. These facilities were also intended to take advantage of a planned International Gymnastic Hall of Fame.

90. CCBT's proposed project cost was approximately $160-200 million. CCBT's JULY 17, 1997 Project Proposal also contained written commitments to provide CCBT financing from Bank One and Nations Bank, and demonstrated that The Cordish Company had more than $1.5 billion in assets, and that each and every one of its projects had been profitable.

K. Defendant TMK/Hogan's 6-Page Proposal

91. Defendant TMK/Hogan also submitted a proposal in response to Urban Renewal's June 26, 1997 RFP, dated July 17, 1997. Defendant's proposal contained six pages, three of which consisted of a letter signed by Defendant Hogan. The remaining three pages consisted of the Parking Agreement between TMK/Hogan, the OKC Athletic Club and the Bricktown Association referred to at ¶ 127 of this Second Amended Complaint.

92. Defendant's said proposal offered a twenty-six-screen theater, an IMAX theater, associated retail and commercial spaces, and a 1,200-space parking facility. Defendant's proposed project cost was approximately $30 million.

93. Defendant's said proposal was deliberately and intentionally fraudulent, in stating, inter alia, (i) that the Bricktown Association was a party to the said agreement; (ii) that Defendant had a letter of intent from "a national theater group"; and (iii) that Defendant had the financing to build its entire proposed project.

94. Defendant TMK/Hogan's said July 17, 1997 proposal additionally fraudulently and intentionally restated Defendants' Torchmark Misrepresentation, Defendant's said July 17, 1997 proposal describing Torchmark as having "a 10 billion dollar balance sheet and ranks in the Fortune 100 in size".

95. Defendants Hogan, TMK/Hogan, Elgin, Hogan Property, Stonegate, Douglas and TDC knew that each developer's experience and financial ability were crucial factors in both the City's selection process and final approval, and participated in Defendants' intentionally fraudulent assurances of possessing adequate financing via their fraudulent Torchmark Misrepresentation.

L. Urban Renewal's July 1997 Selection Process

96. On or about July 17, 1997 Urban Renewal sent Plaintiffs via certified mail a notice of hearing on Urban Renewal's June 26, 1997 RFP for July 21, 1997. The said notice advised Plaintiffs that Urban Renewal staff would present its recommendations on the said RFP to Urban Renewal's Selection Judges as of July 23, 1997.

97. The Selection Judges were to review the RFP proposals and make recommendations to the Urban Renewal Commissioners, who would ultimately select the Bricktown redeveloper. The said Selection Judges included Defendant Douglas; John Gosling, an executive of RTKL; Garner Stoll, Oklahoma City Planning Director; and Dick Coyle, Oklahoma City Planning Commissioner.

98. On July 21, 1997 Cordish, Tal and two of CCBT's local architects presented CCBT's July 17, 1997 Project Proposal to Urban Renewal's Selection Judges.

99. During his July 21, 1997 presentation before Urban Renewal's Selection Judges, Defendant Hogan intentionally and falsely restated Defendants' Torchmark Misrepresentation, and stated that TMK/Hogan has "the financial ability to build every square inch" of Defendant's proposed cinema complex "and lease it back".

100. Defendants' intentionally fraudulent Torchmark Misrepresentation was a major factor in their selection as developers for the project, and in Plaintiffs' failure to be selected as developer for the entire project.

101. During his aforementioned July 21, 1997 presentation to the Urban Renewal Selection Judges, Defendant Hogan further intentionally and fraudulently represented to Urban Renewal's Selection Judges that Defendant TMK/Hogan had a deal with a major theater company to begin construction of Defendant's proposed cinema complex, and that Defendant was ready to commence construction of said complex as of April or May 1998.

102. Construction of Defendant's said cinema complex never commenced by May 1998, and no contract to construct Defendant's said complex had been executed as of the filing of the Complaint in this action.

M. Urban Renewal Limits CCBT to Co-Developing East 26 Acres

103. Prior to reviewing CCBT's Project Proposal, Defendant Douglas publicly declared that CCBT's plan was "too good be true" and that "We don't want to buy blue sky".

104. On or about July 22, 1997 Defendant Douglas sent Plaintiffs via facsimile a notice that Urban Renewal's July 23, 1997 meeting to review the Selection Judges' recommendations had been cancelled until further notice. On or

about July 23, 1997 Defendant Douglas sent Plaintiffs via certified mail a notice that the said Urban Renewal meeting had been rescheduled for July 28, 1997.

105. Upon information and belief said notices of canceling and rescheduling Urban Renewal's July 23, 1997 meeting were intended to prevent the attendance at said meeting of both the chairman of Urban Renewal's Selection Judges and Cordish.

106. Prior to Urban Renewal's July 28, 1997 meeting, and unknown to Plaintiffs and CCBT, Defendant Douglas permitted Defendant TMK/Hogan to supplement its July 17, 1997 proposal as of July 28, 1997, eleven days after Urban Renewal's July 17, 1997 deadline for bids under its June 26, 1996 RFP.

107. On July 28, 1997 Defendant Douglas presented to the Urban Renewal Commissioners Urban Renewal's Resolution No. 4473, designating Defendant TMK/Hogan developer of temporary parking and development in the West 25 Acres; and Urban Renewal Resolution No. 4474, designating Defendant TMK/Hogan and CCBT as co-developers for the East 26 Acres.

108. At the said July 28, 1997 Urban Renewal meeting Defendant Douglas intentionally and fraudulently represented to Plaintiffs and the attending public, including numerous Oklahoma City public officials including City Council members, that a report prepared by Defendant Douglas dated July 25, 1997 in support of Defendants' aforementioned Resolutions No. 4473 and 4474 had been unanimously adopted by Urban Renewal's Selection Judges.

109. At the said July 28, 1997 Urban Renewal meeting Defendant Douglas further deliberately and fraudulently concealed from Plaintiffs and the attending public, including

numerous Oklahoma City public officials, including City Council members, a report by the Chairman of Urban Renewal's Selection Judges favorable to Plaintiffs.

110. The said report intentionally and fraudulently concealed by Defendant Douglas recommended that Urban Renewal evaluate CCBT as the long-term and principal developer for both the West 25 and East 26 Acres, and restrict Defendant TMK/Hogan's participation to constructing the theater complex and the temporary parking facilities, solely at the project's outset.

111. At the said July 28, 1997 Urban Renewal meeting Defendant Hogan restated Defendants' fraudulent claim to have a letter of intent to build the said cinema complex from a national theater group, and that Defendant TMK/Hogan had sufficient financing to complete the said complex without any City participation or subsidy.

112. At the said July 28, 1997 meeting, the Urban Renewal board of Commissioners, based on Defendants Hogan and Douglas' aforementioned intentionally false and misleading representations, selected Defendant TMK/Hogan as exclusive developer of the West 25 Acres for both the parking and the cinema complex (Phase I of the project). The board selected TMK/Hogan and CCBT as co-developers for the East 26 Acres (Phase II of the project).

113. The July 28, 1997 Urban Renewal Resolutions No. 4474 designating Defendant TMK/Hogan and CCBT as co-developers for the East 26 Acres allowed CCBT and TMK/Hogan one hundred eighty days to reach a redevelopment agreement. Despite CCBT's and Plaintiffs' continuous attempt to conduct negotiations with Defendant Douglas for said development contract, Defendant Douglas continually failed and refused to have any negotiation with CCBT or Plaintiffs.

114. Defendant Douglas in so doing further demonstrated that Defendants' intent in having CCBT selected as co-developer of the East 26 Acres was that the said selection be a fraud and a sham that could be dissolved by Defendants at their will.

N. Defendants Retroactively Alter Their Proposal

115. During the July 29, 1997 City Council meeting to review Urban Renewal's aforementioned Resolutions 4473 and 4474, certain City Council members expressed concerns about Urban Renewal's aforementioned July 28, 1997 selection of Defendant TMK/Hogan.

116. During the said Council meeting the Council requested Defendant Douglas to appear before it at the following week's meeting to explain Urban Renewal's said selection of Defendant TMK/Hogan. The Council further protested Urban Renewal's failure to provide the Council with copies of Urban Renewal Resolutions 4473 and 4474 or with copies of the development proposals presented prior to Urban Renewal's selection of Defendant TMK/Hogan and Plaintiffs.

117. On August 1, 1997, Defendant Douglas submitted to the Council a deliberately fraudulent copy of Defendant TMK/Hogan's July 17, 1997 proposal, incorporating numerous material changes intended retroactively to justify Urban Renewal's aforementioned July 28, 1997 selection of Defendant. The said copy additionally included irrelevant documents intended to make Defendant's said proposal have a visual appearance comparable to CCBT's July 17, 1997 Project Proposal.

118. On or about August 4, 1997 Defendant Douglas sent Plaintiffs a letter inviting Plaintiffs to participate in the development of the East 26 Acres, and further requesting that Plaintiffs respond to the said letter by August 15, 1997.

119. At the August 5, 1997 Council meeting to review Urban Renewal's July 28, 1997 selection of Defendant TMK/Hogan, Defendant Douglas intentionally and fraudulently stated that she did not vote on Urban Renewal's July 25, 1997 report. In so stating Defendant Douglas deliberately intended to mislead the Council into believing that she had not been one of Urban Renewal's Selection Judges.

120. The aforesaid August 5, 1997 Council meeting was broadcast live on Cox Cable Channel 20 in Oklahoma City, and thereafter repeated on the 6:30 p.m. rebroadcast of the same two channel.

121. On or about August 6, 1997 Defendant Douglas, Urban Renewal Commissioner Nichols, Urban Renewal Counselor Dan Batchelor and Mayor Norick invited Plaintiffs to continue working with Urban Renewal to negotiate a contract for development of the East 26 Acres by modifying CCBT's development plans.

122. On August 13, 1997 Defendant Douglas sent a letter to Plaintiffs extending the date for Plaintiffs' response to Defendant's letter described in ¶ 118 of this Second Amended Complaint to August 18, 1997.

123. On August 18, 1977, CCBT submitted to Urban Renewal its modified plan for the East 26 Acres. On August 19, 1997 Plaintiffs submitted Cordish's confidential financial report to Defendant Douglas, demonstrating that Cordish possessed $500 million in net assets. Defendant Douglas thereafter fraudulently and intentionally concealed this said report from City authorities, with the intent and effect that said report not be considered in the City's consideration of CCBT as developer.

124. Because of Defendant Douglas's fraudulent concealment of Cordish's aforementioned financial report, a report thereafter issued by City Manager Glenn Deck to the

Mayor and City Council comparing CCBT's and Defendant TMK/Hogan's Bricktown proposals was fatally biased in favor of Defendant and against Plaintiffs, because it concealed from the Council all knowledge and information respecting CCBT's financial backing.

Q. Defendants Default on Parking But Gain Contract For It

125. The price of parking was a major issue during the City Council's review of the MAPS Project. Between July 17, 1997 and July 29, 1997, in interviews with local television and radio stations, and during Defendant's presentation before the Selection Judges, Defendant Hogan intentionally and fraudulently, and in furtherance of Defendants' fraudulent Scheme, stated that Defendant TMK/Hogan would "charge no more than two dollars per day, or fifty cents an hour" for parking. Subsequent to being awarded the Parking Contract described in ¶ 127 of this Second Amended Complaint, Defendants never charged as little as two dollars per day or fifty cents per hour for parking

126. As of December 11, 1997 Defendants Hogan and TMK/Hogan had not reached any agreement for construction of the temporary parking required by the MAPS Master Plan and Urban Renewal's June 26, 1997 RFP. On December 11, 1997 Plaintiffs offered to construct the temporary parking in the West 25 Acres that Defendant Hogan had failed to achieve. On or about December 16, 1997 Urban Renewal issued a request for construction bids for the 1,200 surface parking lots in the West 25 Acres.

127. On or about December 19, 1997 Urban Renewal entered into the Parking Redevelopment Agreement ("Parking Agreement") with Defendant TMK/Hogan, OKC Athletic and the Bricktown Association described in ¶ 91 of this Second Amended Complaint, for the exclusive use and operation of all

parking facilities in both the West 25 acres and the East 26 Acres. On or about February 4, 1998 Urban Renewal entered into a Ground Lease under the said Parking Agreement.

128. On or about January 26, 1998, Defendant Douglas mailed a letter to Plaintiff BT-2000 and Tal postponing negotiation for a contract with CCBT for developing the East 26 Acres because Urban Renewal was experiencing "difficulties" in carrying out the Parking Agreement with TMK/Hogan.

P. Plaintiffs Demonstrate East Canal Can Be Made Navigable

129. On or about February 10, 1998, after investing substantial time and funds, Plaintiffs presented to Mayor Norick, the City Council and Urban Renewal their proposal for raising the previously planned non-navigable East section of the canal described in ¶ 89(iv) of this Second Amended Complaint.

130. The City had previously awarded a contract to construct the East section of the canal seven feet lower than the West canal. On or about February 17, 1998 Mayor Norick presented Plaintiffs' proposal to raise the East canal to City staff and MAPS board for review and consideration.

131. On or about February 14, 1998 Urban Renewal extended by two months TMK/Hogan's and CCBT's 180-day deadline for negotiating their co-development of the East 26 Acres referred to in ¶ 113 of this Second Amended Complaint. As of February 18, 1998 Urban Renewal had not sent the said notice to CCBT.

132. After three months of review by City staff, the MAPS board in mid May 1998 approved Plaintiffs' proposal to raise the canal elevation in the East 26 Acres.

Q. Urban Renewal Makes A Gift to Defendants of All 51 Acres

133. On or about May 11, 1998, Defendant Douglas promised to have Bricktown property owner Tolbert, in exchange for his support of Defendants' fraudulent Scheme, appointed Urban Renewal Commissioner. On or about January 5, 1999, the City approved Defendant Douglas' recommendation that Tolbert be so appointed Urban Renewal Commissioner.

134. On or about May 18, 1998, Tolbert sent a letter to City Council members, the Mayor, City Manager and Urban Renewal supporting Defendant TMK/Hogan as developer annexing a Position Statement On Need for Updated Bricktown Master Plan and Development South of Bricktown stating that CCBT should be eliminated as developer altogether. Tolbert is president of the Bricktown Association, and his letter was intended by Defendant TMK/Hogan to support its fraudulent July 17, 1997 representation that the Bricktown Association was as of the date of said proposal Defendant's partner.

135. On or about May 20, 1998 Defendant Douglas sent a facsimile to Plaintiffs and to Cordish in Baltimore. The said facsimile stated that Urban Renewal's board May 21, 1998 would vote on a proposed resolution giving Defendant TMK/Hogan development rights to the entire 51-acre MAPS project area and canceling CCBT'S prior, July 28, 1997 designation by Urban Renewal as co-developer.

136. Defendant Douglas's said May 20, 1998 facsimile notice violated the ten-day notice provision of the Oklahoma Public Meeting Act.

137. On May 26, 1998 Defendant Douglas submitted to the City Council and MAPS Oversight Board a resolution in support of Urban Renewal's proposed agreement with

Defendant TMK/Hogan. Under the said agreement the City (i) transferred to Defendant TMK/Hogan ownership of the entire 51 acres, for which the City had paid approximately $4 million to $5 million, plus approximately $1 million in Federal community development block grant funds, in exchange for Defendant's promise to make less than $4 million in improvements; (ii) and further provided Defendant $4 million of loans in community development block grants.

138. CCBT's July 17, 1997 Bricktown Project Proposal stated that Plaintiffs would finance the entire cost of land purchases in the project, provide $8 million to $11 million in improvements and require no City subsidies.

R. Council 5-4 Against Confirming TMK/Hogan Developer

139. From May 23, 1998 through June 29, 1998 five out of the nine members of the City Council were against approving Urban Renewal's grant of development rights to the entire 51 acres to Defendant TMK/Hogan.

140. One of the four Council members favoring Defendants as of this period, Mark Schwartz, had in a July 29, 1997 Council meeting violently attacked Urban Renewal and the Hogan Defendants. Thereafter, Tolbert, Brewer, Hall and others gave Schwartz legal work, so that he became part of the four-member Council faction favoring Defendants.

141. The five-member majority of the Council members were in favor of a compromise proposal whereby CCBT would be selected to develop the majority of the property, and Defendant TMK/Hogan would be given the right to develop approximately ten to eleven acres in South Bricktown for its proposed cinema complex.

142. On or about May 25, 1998 Oklahoma City Mayor Kirk D. Humphreys ("Mayor Humphreys"), who had succeeded Mayor Norick April 1, 1998, requested that Cordish reconfirm The Cordish Company's status as joint venture partner in CCBT. Cordish confirmed the Cordish Company's status as joint venture partner in CCBT.

143. During the May 28, 1998 MAPS Oversight Board meeting Defendant Douglas and Urban Renewal Counsel again intentionally and fraudulently represented to the MAPS Oversight Board Defendants' Torchmark Misrepresentation.

144. The MAPS Oversight Board requested that Defendant Douglas provide the Board the financial statements of both Defendant TMK/Hogan and Torchmark. Defendants thereafter, with Defendant Douglas's knowing and intentional complicity, provided solely Torchmark's 1997 SEC Form 10K.

145. On June 8,1998 Defendant TMK/Hogan sent a letter to the City offering to pay the City approximately $3.3 million for 31.45 acres or $2.4 million for the City-owned West 25 Acres. In exchange, Defendant proposed that the City pay for approximately $3 million in improvements to Defendant's Bricktown property.

146. Defendant TMK/Hogan's aforesaid June 8, 1998 letter further fraudulently and intentionally restated Defendants' Torchmark Misrepresentation.

147. As of the date of the filing of the Complaint in this action, the City has spent more than $5 million of MAPS funds on the West 25 Acres, not including certain condemnation litigations.

S. Defendant TMK/Hogan's Phantom IMAX Theater

148. On or about June 25, 1998 Defendant Hogan intentionally and fraudulently represented to the MAPS Board, with the intent that the MAPS Board would support Defendant TMK/Hogan's selection as developer for the entire Bricktown area, to the exclusion of Plaintiffs, that (i) Torchmark and Torchmark Development Corporation were "the same"; (ii) that Torchmark was Defendant's 50% partner in Defendant TMK/Hogan; and (iii) that the IMAX was part of Defendant's cinema complex.

149. On or about July 10, 1998 Defendant Hogan sent a letter to Oklahoma City Manager Glenn Deck again intentionally and fraudulently representing that Torchmark was Defendant TMK/Hogan's partner and that IMAX was Defendant's partner in its proposed cinema complex.

150. Defendant TMK/Hogan's partner in its proposed cinema complex was never IMAX. Defendant's partner in its proposed cinema complex was Edwards Theaters. Edwards Theaters filed for Bankruptcy protection on or about August 23, 2000.

151. As of the date of the filing of the initial Complaint in this action Defendant TMK/Hogan continued to lack the financial ability to finance any project in Bricktown.

T. Liebmann Switches Sides; Mr. Schwartz Goes to Washington

152. During the June 9, 1998 Council meeting, City Councilman Guy Liebmann ("Liebmann") suggested inviting Cordish to meet the Council and compare CCBT's and Defendant TMK/Hogan's proposals. On or about June 10, 1998

Liebmann sent a letter to Cordish inviting him to Oklahoma City.

153. Cordish accepted the proposal and arranged to arrive in Oklahoma City on June 29, 1998.

154. On or about June 26, 1998 Liebmann advised Tal that if Plaintiffs would pay Liebmann $50,000 for mayoralty campaign "debts" that were in fact loans made by Liebmann for himself, he would vote in CCBT's favor at the Council meeting on the Bricktown development.

155. On or about June 30, 1998 Tal refused Liebmann's request to have a five-minute private conference with Cordish in order to renew his request for $50,000 to cover his campaign debts. Liebmann thereupon withdrew his request to meet with Cordish.

156. On July 21, 1998 two resolutions were before the City Council respecting the Bricktown development. The first was the aforementioned compromise proposal, allowing Defendant TMK/Hogan develop its proposed cinema complex on approximately ten to eleven acres, and also allowing CCBT to develop the remaining forty-one acres. The second resolution was to permit Defendant TMK/Hogan to develop the entire 51 acres.

157. The first resolution failed by a 5-4 vote, with Liebmann voting against it. The second resolution passed 5-4, with Liebmann voting in favor of it. Liebmann's two votes as stated in this paragraph astounded fellow Council members including the Council's senior member, because Liebmann had previously continuously stated that he would vote to approve the first of the two said resolutions.

158. Prior to Liebmann's change of vote as stated in the prior paragraph of this Second Amended Complaint, on or

about July 16, 1998, Defendants Douglas and Hogan, Urban Renewal Commissioners Hall, Tolbert and Stanton Young and other affiliated individuals paid Liebmann all or part of the $50,000.00 that Liebmann previously requested of Tal.

159. On July 21, 1998 the City approved Urban Renewal's Bricktown Entertainment Center Redevelopment Agreement, approving the resolution of Defendant Douglas described in ¶ 137 of this Second Amended Complaint.

160. From about July 1998 through the time of filing this Complaint, Defendant Douglas caused the appointment of Councilman Liebmann to political positions with various City trusts, and additionally appointed Liebmann director of Second Century, in exchange for Liebmann's vote as stated in ¶ 157 of this Second Amended Complaint.

161. On or about December 8, 1998, Defendants Hogan and Hogan Property released a lien held by them on Hall's Fred Jones Automotive property in Edmond, Oklahoma, in exchange for Hall's Urban Renewal votes supporting Defendants.

162. Also in or about December 1998, Councilman Schwartz obtained a position with the Secretary of Energy in Washington, D.C., upon information and belief due at least in part to a recommendation made by Urban Renewal Commissioner Hall.

U. Defendant Douglas Reprises Torchmark Misrepresentation

163. On or about June 2, 2000, in further pursuance of Defendants' fraudulent Torchmark Misrepresentation, Defendant Douglas sent a letter to City Manager Glenn Deck, stating that the Torchmark Development Corporation acquired by Defendant Elgin in 1999 had owned 50% of Defendant

TMK/Hogan in or about 1996. Defendant Douglas' said letter stated in pertinent part:

> This letter is written to provide a current review and status report on the composition of the redeveloper entity which is seeking to develop the Bricktown Entertainment Center in accordance with the redevelopment plan adopted by the City of Oklahoma City.
>
> As originally proposed and discussed at various public meetings and hearings, and thereafter when the Bricktown Entertainment Center Redevelopment Agreement was signed July 24, 1998, Torchmark Corporation owned all of the corporate stock of Torchmark Development Corporation, which owned all of the corporate stock of Stonegate Management Corporation, which owned a 50% ownership interest in the redeveloper. . . .
>
> "On September 30, 1999, Torchmark sold all of the outstanding stock of Torchmark Development Corporation to Elgin Development Company, LLC, as a part of Elgin Development Company's acquisition of all of Torchmark's real estate portfolio. . . . Prior to that transfer, Mark D. Elgin was the Executive Vice President and Chief-Operating-Officer of Torchmark Development Corporation and the president and Chief Executive Officer of Stonegate Management Corporation. Subsequent to that transfer,

and continuing thereafter as Torchmark Development Corporation and Stonegate Management Corporation were converted for tax purposes into limited liability companies, Mark Elgin continued as the sole manager of Elgin Development Company and he and R.K. Richey (former Chairman of Torchmark) continued to own a majority of the ownership interests. Torchmark Development has continued to wholly own Stonegate Management, and Stonegate Management has continued to own its prior 50% ownership interest in the redeveloper.

164. Defendant Torchmark Development Corporation, purchased from Torchmark by Defendants Elgin and Elgin Development Co. in 1999 did not own either Defendant Stonegate nor its predecessor Stonegate Management Corp. in 1996. By fraudulently and intentionally representing to City Manager Glenn Deck on or about June 2, 2000 that the Torchmark Development Corporation purchased by Defendants Elgin and Elgin Development Co. in or about September 1999 owned Stonegate Management Corp. in 1996, Defendants Elgin, Elgin Development Corp. and Douglas fraudulently intended to and succeeded in furthering Defendants' Torchmark Misrepresentation.

165. Upon information and belief, Defendant Douglas' above-quoted letter to City Manager Glenn Deck was in response to a letter to Mr. Deck from a concerned taxpayer and member of Taxpayers Against Ripoffs stating, inter alia, that Torchmark had filed an Answer in former plaintiff Tal's qui tam litigations denying that it was a partner in Defendant TMK/Hogan, and that despite the City's requirement of

Defendant, as of 1997, that its proposed theater be open by 1998, Defendant had still not built its theater.

V. May 2002 Bass Pro Contract; August 2002 Sweetheart Deal

166. Bass Pro is a publicly traded chain of national outdoor sporting goods stores. The same individuals and entities identified in ¶ 71 of this Second Amended Complaint own approximately 30% of it. The site selected by Urban Renewal for Bass Pro, the first legitimate commercial tenant brought to Bricktown by Defendants, is on a select part of the East 26 Acres.

167. The City Council May 21, 2002 authorized Urban Renewal to negotiate the Bass Pro contract. Pursuant to said contract, the City, and not Defendant TMK/Hogan, nor any of its affiliated entities, will finance the $18 million contract and lease the Bass Pro property back to Bass Pro at a below-market rent.

168. Defendants Hogan, TMK/Hogan, Elgin, TDC and Stonegate promoted the Bass Pro contract with the City, pursuant to which the City will pay $18 million in MAPS and other public funds to construct the Bass Pro shop. Pursuant to said contract the City will also provide $250,000.00 to Defendant TMK/Hogan, purportedly in compensation for release of its redevelopment rights in the same said property.

169. Under the pretext that the property now allocated to the Bass Pro shop will occupy part of the property previously allocated for temporary parking, the City under the Bass Pro contract, as modified, further agreed to "replace" said temporary parking facilities by donating to the said individuals and entities identified in ¶ 71 of this Second Amended Complaint a new and additional property on Bricktown's north side. These aforesaid individuals and entities will now have the income from

approximately 2,600 parking spaces in exchange for an annual rental of $1,000.00.

170. On August 4, 2002 Urban Renewal further approved a modification of Defendant's Hogan's proposed purchase of the MAPS properties related in ¶ 145 of this Second Amended Complaint, pursuant to which Defendant will now pay $1.95 million, in place and lieu of the former approximately $2.4 million for the City-owned West 25 Acres; and pursuant to which approved modification the City will reimburse Defendant $4 million, in lieu and place of the $3 million in Defendant's initial proposal.

W. RICO Continuity: Defendants' East Wharf Fraud

171. On or about October 20, 1992, the City published an RFP soliciting proposals to develop approximately 6.35 acres of property located on the East side of Lake Hefner in Oklahoma City known as the "East Wharf" site.

172. On or about December 21, 1992, in response to the RFP, the City's Water Trust received proposals from Defendant Hogan Property and from the Tapp Companies, headed by developer Barry Tapp.

173. The City selected Defendant Hogan Property on or about April 5, 1994. Thereafter the City and Defendant Hogan Property could not agree on terms for the East Wharf development. Upon information and belief Defendant Hogan Property requested improvements in the development lease agreement. The East Wharf development contract was stalled for more than two years.

174. Thereafter, on or about June 4, 1996, in a report issued by the City Manager, it was revealed that: (a) the said lease agreement was not between the City and Defendant Hogan Property, but instead with a new entity called East Wharf

Development, L.L.C. ("East Wharf"); (b) the sole manager of East Wh vas HPC Investments, L.L.C.; and, (c) Defendant Hogan's .er was the sole manager of HPC Investments.

175. Additionally, the "secret" partner in East Wharf Development, L.L.C. entity was Urban Renewal Commissioner Hall, Fred Jones Properties or Fred Jones Industries.

176. On June 4, 1996, City Council approved the lease agreement Between the City and East Wharf. The said lease agreement is a giveaway to Defendants Hogan and Hogan Property. The lease's terms are more favorable than those in the proposals submitted by other bidders, as well more favorable than the terms as in Defendant Hogan Property's initial proposal. The lease agreement requires no minimum rental requirement, but instead for a monthly rental equal to 22.5% of gross revenues, which 22. 5% figure is reduced to 3% for the initial eight years. The lease agreement further permits East Wharf three years to open the first venue on the site, and only one 5,000-square-foot restaurant within that three-year period. The City is obligated to invest $280,000.00 in "public improvements" within nine (9) months from the lease's execution.

X. Defendants' Predicate Acts

X. (a):. Mail Fraud

177. The following Defendants engaged in the following acts of 18 U.S.C. §1343 mail fraud in support of Defendants' fraudulent Torchmark Misrepresentation and related Sherman Act bid rigging and monopoly violations:

(i). Defendant Hogan on or about the early part of June, 1996, mailed from Oklahoma City, Oklahoma to Defendants Elgin in Birmingham, Alabama, a package containing the Urban

Renewal's June, 1996 Request for Proposal ("RFP") for the redevelopment of the East 26 Acres;

(ii). Defendant Elgin on or about July 25, 1996, mailed from the Birmingham, Alabama area to Defendant Hogan in Oklahoma City, Oklahoma, the 1995 10-K Annual Report and Financial Statement of Torchmark;

(iii). Defendant Hogan on or about July 26, 1996 sent a letter to Urban Renewal including the Redeveloper's Statement for Public Disclosure and Redeveloper's Statement for Qualifications and Financial Responsibility, Form H-6004 referred to in ¶ 46 of this Second Amended Complaint.

(iv). Defendants Elgin and/or Stonegate on or about September 23, 1996 mailed from Alabama to Defendants Hogan and TMK/Hogan in Oklahoma City an Addendum to Developer's Statement of Qualification and Financial Responsibility including a copy of Torchmark's 1995 SEC Form 10K;

(v). Defendant Elgin in or about October, 1996 mailed from Alabama to Defendant Hogan in Oklahoma a package including, but not limited to, color brochures of Torchmark Development Corp.'s Liberty Park project in Birmingham, Alabama;

(vi). Defendant Douglas on or about March 19, 1997, mailed to Defendant Elgin in Alabama the Urban Renewal Resolution and related documents indicating TMK/Hogan's proposed

development for the East 26 Acres approved by the Urban Renewal Commissioners;.

(vii). Defendants Douglas and Hogan on or about March 24, 1997 mailed from Oklahoma City to Defendant Elgin in Alabama the RTKL *Downtown Oklahoma City Action Plan* as adopted by Enterprise Urban Renewal on March 24, 1997 referred to in ¶¶ 78 et seq. of this Second Amended Complaint;

(viii). On June 26, 1997, Defendant Douglas and Urban Renewal mailed to former Plaintiff Tal a package containing Urban Renewal's RFP document and an invitation letter for Plaintiff BT-2000 to participate in Urban Renewal new RFP for the development of both the East 26 Acres and the West 25 Acres;

(ix). On or about June 26, 1997, Defendants Douglas and Hogan mailed from Oklahoma to Defendant Elgin in Alabama the Urban Renewal's June 26, 1997 RFP documents and invitation;

(x). On or about July 15, 1997, Defendant Elgin mailed from Alabama to Defendant Hogan in Oklahoma City Torchmark's 1996 10-K Annual Report;

(xi). On July 17, 1997, Defendant Douglas and Urban Renewal mailed to Plaintiff BT-2000 and Tal a notice inviting them to submit an oral presentation of CCBT's proposal on July 21, 1997;

(xii). On July 23, 1997, Defendant Douglas and Urban Renewal mailed a letter to Plaintiff BT-

2000 and Tal referred to in ¶ 104 of this Second Amended Complaint

(xiii). On or about July 28, 1997, Defendants Douglas mailed from Oklahoma City to Defendant Elgin in Alabama Urban Renewal's Resolutions No. 4473 selecting TMK/Hogan as developer for the West 25 Acres, and 4474 selecting CCBT and TMK/Hogan as co-developers of the East 26 Acres;

(xiv). On or about July 28, 1997, Defendants Douglas mailed from Oklahoma City to Cordish in Baltimore, Maryland, Urban Renewal's Resolution No. 4473 selecting TMK/Hogan as developer for the West 25 Acres, and Resolution No. 4474 selecting CCBT and TMK/Hogan as co-developers of the East 26 Acres;

(xv). On or about July 29, 1997, Defendant Elgin mailed from Alabama to Defendant Hogan in Oklahoma City additional copies of Torchmark Corporation's 1996 10-K Annual Report;

(xvi). On August 4, 1997, Defendant Douglas mailed to Plaintiff BT-2000 and to Tal a copy of the Urban Renewal's July 28, 1997 Resolutions of which one Resolution designated CCBT as co-developer for the East 26 Acres and granted it 180 days to negotiate a contract. Referred to in ¶ 113 of this Second Amended Complaint;

(xvii). On August 13, 1997, Defendant Douglas sent a letter to Plaintiffs extending the date for Plaintiffs' response referred to in ¶ 122 of this Second Amended Complaint;

(xviii). On January 26, 1998, Defendant Douglas mailed a letter to Plaintiff BT-2000 and Tal referred to in ¶ 128 of this Second Amended Complaint;;

(xix). On or about May 17, 1998, Defendant Elgin mailed from Alabama to Defendants Hogan and Douglas in Oklahoma City documents relating to Torchmark Development Corp.'s Liberty Park project;

(xx). On or about May 18, 1998, Defendants caused Bricktown property owner Tolbert to mail the letter referred to in ¶ 134 of this Second Amended Complaint. Tolbert mailed this letter to a minimal ten different addresses;

(xxi). On or about May 21, 1998, Defendant Douglas mailed from Oklahoma City to Defendant Elgin in Alabama, Urban Renewal's Resolution No. 4527 which approved the de-selection of CCBT as co-developer of the East 26 Acres, and granting the TMK/Hogan team the exclusive development of the entire 51 acres;

(xxii). On or about June 4, 1998, Defendant Elgin mailed from Alabama to Defendant Hogan in Oklahoma City documents relating to Defendant TMK/Hogan's purported development plan including Torchmark Corporation's 1997 10-K Annual Report to Defendant Hogan in Oklahoma City;

(xxiii). On or about June 8, 1998, Defendant Hogan mailed a letter to all members of City Council and Mayor Humphreys including Torchmark's 1997 10-K Annual Report;

(xxiv). On or about June 15, 1998, Defendants Hogan and Douglas mailed from Oklahoma City to Defendant Elgin in Alabama drafts of the Development Agreement between Urban Renewal and Defendants Stonegate, Hogan Property and Hogan Entertainment, including Urban Renewal Resolution No. 4537 recommending that the City Council approve said Development Agreement;

(xxv). On or about June 22, 1998, Defendant Elgin mailed from Alabama twenty-two additional copies of Torchmark's 1997 10-K Annual Report to Defendant Hogan in Oklahoma City;

(xxvi). On or about June 30, 1998, Defendant Hogan mailed from Oklahoma City to Defendant Elgin in Alabama the City Council's June 30, 1998 Resolution respecting Defendant TMK/Hogan's proposed Development Agreement;

(xxvii). On or about July 15, 1998, Defendants Hogan and Douglas mailed from Oklahoma City to Defendant Elgin in Alabama a modified version of the aforementioned Development Agreement;

(xxviii). On or about July 21, 1998, Defendant Douglas and Hogan mailed from Oklahoma City to Defendant Elgin in Alabama the final Development Agreement for Defendant Elgin's signature.

(xxix). On or about July 24, 1998, Defendant Elgin mailed from Alabama to Defendants Douglas

and Hogan in Oklahoma City the Redevelopment Agreement with his notarized signature;

On or about August 3, 1998 Defendant (xxx).

Douglas mailed to Tal a copy of RTKL's March 3, 1998 report;

On or about December 4, 1998, Defendant (xxxi).

Hogan mailed from Oklahoma City, to Defendant Elgin in Alabama the executed December 4, 1998 Urban Renewal Resolution No. 4569 approving Defendants TMK/Hogan and Hogan Entertainment's aforementioned Development Plan;

On or about December 8, 1998, (xxxii).

Defendants Hogan and Hogan Property mailed to Urban Renewal a document containing termination of a U.C.C. Lien No. N0003362 as filed with the Oklahoma County Clerk on November 14, 1994 against two real property transactions exchanged from Hogan Property Company to Fred Jones Automotive Group Inc. on 8/31/94 and 9/30/94 respectively. Termination of lien, No. T0006076;

On or about January 2, 1999, Defendant (xxxiii).

Elgin mailed from Alabama to Defendant Hogan in Oklahoma City documents including a "Memorandum of Lease" between Defendants TMK/Hogan and Hogan Entertainment and Edwards theaters, in order fraudulently and intentionally to mislead City Council into believing that Defendants would shortly commence construction of the cinema Complex;

(xxxiv). On or about March 25, 1999, Defendant Elgin mailed from Alabama to Defendant Hogan in Oklahoma City, the Torchmark's 1998 10-K Annual Report;

(xxxv). On or about March 17, 2000, Defendant Elgin mailed from Alabama to Defendant Hogan in Oklahoma City documents including a "progress report" and Defendants Stonegate, Elgin Development and TDC's' "qualifications";

(xxxvi). On or about July 21, 2000, Defendants Douglas, Hogan and Elgin caused the City Manager to send a letter to Mr. Ron Benton attaching letters by Defendant Douglas dated June 2, 2000, and July 7, 2000 stating that construction on Defendant' theater complex would begin August 20, 2000;

(xxxvii). On or about September 25, 2000, Defendant Hogan mailed from Oklahoma City to Defendant Elgin in Alabama the Urban Renewal's Resolution No. 4697 approving a Second Amended Development Agreement, and a copy of said agreement providing Defendants TMK/Hogan, Hogan Entertainment, Stonegate and Hogan Property an additional 300-day extension to commence construction of Defendants' cinema Complex;

(xxxviii). On or about July 31, 2001, Defendant Hogan mailed from Oklahoma City to Defendant Elgin in Alabama Urban Renewal's Third Amendment to the Development Agreement providing Defendants TMK/Hogan, Hogan

Entertainment and Stonegate extensions of time to construct their proposed entertainment complex;

(xxxix). On or about August 2, 2001, Defendant Elgin mailed from Alabama to Defendant Hogan in Oklahoma City the Urban Renewal's Third Amendment to the Development Agreement with his signature, in furtherance of the Defendants ongoing Scheme to cover up their inability to perform;

(xl). On or about August 28, 2001, Defendant Douglas mailed from Oklahoma City to Defendant Elgin in Alabama the City's August 28, 2001 Resolution granting TMK/Hogan, Hogan Entertainment and Stonegate another extension until December 31, 2004 to begin construction of their entertainment development;

(xli). On or about August 31, 2001, Defendant Elgin mailed from Alabama to Defendant Douglas and Hogan in Oklahoma City the Urban Renewal's August 28, 2001 amended agreement which grants TMK/Hogan, Hogan Entertainment and Stonegate another extension until December 31, 2004 to begin construction of their entertainment development, with Defendant Elgin's signature;

(xlii). On or about March 6, 2002, Defendant Hogan mailed from Oklahoma City to Defendant Elgin in Alabama the City's March 5, 2002 Joint Resolution and City Manager's report relating to having the City and not TMK/Hogan team invest the $18 Million to build Bass Pro Shops, and accordingly, the City and Urban Renewal shall

be the landlord, and TMK/Hogan shall be compensated for losing the right to develop about 15 acres out of the East 26 Acres;

(xliii). On or about May 21, 2002, Defendants Douglas and Hogan mailed from Oklahoma City to Defendant Elgin in Alabama the City's Resolution approving the lease agreement between Urban Renewal and Bass Pro and a copy of said lease agreement;

(xliv). On or about August 1, 2002, Defendants Douglas and Hogan mailed from Oklahoma City to Defendant Elgin in Alabama draft of an agreement and proposed City Resolution whereby the TMK/Hogan team will receive from Urban Renewal and the City the sum of $250,000 for agreeing to let the City invest $18 Million in building the Bass Pro Shop and for Defendant TMK/Hogan's "losing" its position as "landlord";

(xlv). On or about August 10, 2002, Defendants Elgin mailed from Alabama to Defendant Hogan and Douglas in Oklahoma City his signed agreement whereby the TMK/Hogan team will receive from Urban Renewal and the City the sum of $250,000;

(i). On or about October 4, 2002, Defendant Hogan mailed from Oklahoma City to Defendant Elgin in Alabama a draft agreement between Urban Renewal and Defendants TMK/Hogan, Bricktown Entertainment and Stonegate to purchase the usable portion of the West 25 Acres for less than $2 Million.

X(b): Wire Fraud

178. From on or about June 24, 1996 through the time of filing this Complaint, the Defendants used telephone and other wire services (fax, internet, etc.) to exchange numerous documents (between the Alabama Defendants and the Oklahoma Defendants) and discuss their conspiracy relating the fraudulent representations, including but not limited to:

(a). From on or about June 24, 1996, through July 25, 1996 Defendants Hogan, TMK/Hogan, and Hogan Property, sent, and/or caused to be sent, via electronic means, such as fax and email, from Oklahoma City, Oklahoma, to Defendants Elgin, Stonegate and TDC in Birmingham, Alabama, several drafts of a document titled: Real Estate Development And Financial Qualification And Experience;

(ii). From on or about June 24, 1996, through July 25, 1996 Defendants Elgin, Stonegate and TDC, sent, and/or caused to be sent, via electronic means, such as fax and email, from Birmingham, Alabama, to Defendants Hogan, TMK/Hogan, and Hogan Property in Oklahoma City, Oklahoma, several drafts of the aforementioned fraudulent document titled: Real Estate Development And Financial Qualification And Experience.

(iii). From on or about June 24, 1996, through July 26, 1996 Defendants Elgin, and other management members of Defendants Stonegate and TDC, in Birmingham, Alabama, held numerous telephone conversations with Defendant Hogan and other management

members of Defendants TMK/Hogan and Hogan Property in Oklahoma City, Oklahoma, discussing the drafting and contents of aforementioned fraudulent document titled: Real Estate Development And Financial Qualification And Experience;

(iv). On or about July 25, 1996 Defendants Hogan, TMK/Hogan, Hogan Property, Elgin, Stonegate and TDC, sent, and/or caused to be sent, via electronic means, such as fax and email, to each other the final draft of the aforementioned fraudulent document titled: Real Estate Development And Financial Qualification And Experience;

(v). On or about May 22, 1997, Defendant Hogan sent from Oklahoma City, via telephone facsimile transmission, a draft of a document titled: Agreement With Respect to Parking Facility, to Defendant Elgin in Alabama;

(vi). On or about July 18, 1997, Defendant Hogan sent, via telephone facsimile transmission, a Memo referenced: Proposed Parking Agreement Structure, to Mr. Clay Bennett, manager/owner of OKC Athletic; Mr. Don Karchmer, manager and representative of several property owners in Bricktown; and Mr. David Vance, Manager of the Oklahoma City 89ers Ball Team;

(vii). On July 22, 1997, Urban Renewal and Defendant Douglas sent to Plaintiffs, via telephone facsimile transmission, a notice canceling the scheduled July 23, 1997 Urban Renewal and Selection Judges meeting until further notice;

(viii). On or about July 28, 1997, Defendants Hogan sent from Oklahoma City, via telephone facsimile transmission, to Defendant Elgin in Alabama the Urban Renewal's Resolution No. 4473 selecting TMK/Hogan as developer for the West 25 Acres, and Resolution No. 4474 selecting CCBT and TMK/Hogan as co-developers of the East 26 Acres;

(ix). On or about July 28, 1997, Defendants Hogan talked from Oklahoma City, via the telephone, to Defendant Elgin in Alabama and advised him of the Urban Renewal's Resolution No. 4473 selecting TMK/Hogan as developer for the West 25 Acres, and Resolution No. 4474 selecting CCBT and TMK/Hogan as co-developers of the East 26 Acres;

(a) On or about August 1, 1997 Defendant Douglas submitted to the City Council further documents in support of Defendant TMK/Hogan that had previously been sent by facsimile to Defendant Douglas by Defendant TMK/Hogan.

(b) The August 5, 1997 Council meeting described in ¶ 118 of this Second Amended Complaint was broadcast live on Cox Cable Channel 20 in Oklahoma City, and thereafter repeated on the 6:30 p.m. rebroadcast on the same channel.

(c) On or about December 17, 1997, Defendant Hogan sent from Oklahoma City, via telephone facsimile transmission, the Urban Renewal's Resolution No. 4497 approving the Parking Agreement between TMK/Hogan, Hogan Parking, and Urban Renewal, obtained as part of Defendants Scheme, to

Defendant Elgin in Alabama; to Mr. Bennett and Mr. Vance of OKC Athletic in Oklahoma; to Mr. Tolbert and Mr. Karchmer of BAP, and to other Bricktown property owners;

(d) On or about December 17, 1997, Defendants Hogan talked from Oklahoma City, via the telephone, to Defendant Elgin in Alabama and advised him of the Urban Renewal's Resolution No. 4497;

(e) On or about February 18, 1998, Defendant Hogan sent to BAP's members and to OKC Athletic, via telephone facsimile transmission, Urban Renewal's Resolution Nos. 4512, 4513, and 4514 approving six months extension of time to negotiate a contract with TMK/Hogan for the development of the West 25 Acres, and approving two moths extension of time to negotiate contracts with CCBT and TMK/Hogan for the co-development of the East 26 Acres;

(f) On or about May 21, 1998, Defendant Hogan sent from Oklahoma City, via telephone facsimile transmission, to Defendant Elgin in Alabama, the Urban Renewal's Resolution No. 4527 which approved the de-selection of CCBT as co-developer of the East 26 Acres, and granting the TMK/Hogan team the exclusive development of the entire 51 acres;

(g) Between May 11, 1998 and May 18, 1998, Defendants Hogan, Elgin and Douglas held numerous telephone conversations among themselves, and with Mr. Tolbert and others planning the Scheme whereby Tolbert will mail the May 18, 1998 letter described in ¶ 134 of this Second Amended Complaint to City officials;

(h) On June 26, 1998, Defendant Douglas sent from Oklahoma City, via telephone facsimile transmission, a letter to Cordish in Maryland, and a copy to Tal in Oklahoma City, inviting Cordish to meet with her during his June 29-30, 1998 visit in Oklahoma City;

(i) On June 26, 1998, Defendants Hogan and Elgin, called Mayor Humphreys in Florida and caused him to send a fax to Tal whereby Mayor Humphreys advised Tal that he is canceling and objecting to meeting with Cordish;

(j) On June 26, 1998, Defendants Hogan and Elgin, called Councilman Schwartz in Florida and caused him to send a fax to Moshe Tal whereby Schwartz advised Tal that he does not wish to meet with Cordish;

(k) On Sunday, June 28, 1998, Defendant Douglas faxed from Oklahoma City a letter to Cordish in Baltimore, and faxed a copy to Tal in Oklahoma City, whereby Douglas cancels her visit with Cordish;

(l) On or about December 1, 1998, Defendant Hogan sent, from Oklahoma City via telephone facsimile transmission, to Defendant Elgin in Alabama, development plans and a draft of the purported lease agreement between Defendant Hogan Entertainment and Edwards Theaters;

(m) On or about December 1, 1998, Defendant Hogan spoke from Oklahoma City with Defendant Elgin in Alabama, via the telephone and discussed the Scheme to submit development plans and a draft of the purported lease agreement between

Defendant Hogan Entertainment and Edwards Theaters;

(n) On or before December 3, 1998, Defendant Elgin sent, from Alabama, via telephone facsimile transmission, to Defendants Hogan and Douglas in Oklahoma City the Edwards theaters document and development plans to be submitted to the Urban Renewal Commissioners at their December 4, 1998 meeting;

(o) On or about December 4, 1998, Defendant Hogan sent from Oklahoma City, via telephone facsimile transmission, to Defendant Elgin in Alabama the executed December 4, 1998 Urban Renewal Resolution No. 4569;

(p) On or about January 2, 1999, Defendant Hogan spoke from Oklahoma City with Defendant Elgin in Alabama via the telephone and discussed developing a Scheme whereby they will submit to City Council only a one page document tiled "Memorandum of Lease" instead of the required firm contract between TMK/Hogan, Hogan Entertainment and Edwards theaters, as well as other documents relating to specific Development Plan and construction schedules. This was done intentionally to mislead City council to believe that they will begin construction of the cinema Complex shortly, when if fact no firm contract nor financial were in place. This was done to avoid missing the six months deadline imposed by City council on July 21, 1998 and eliminating the possibility of Plaintiffs gaining said contract;

(q) On or about August 7, 2002, Defendants Hogan faxed from Oklahoma City to Defendant Elgin in

Alabama the executed August 6, 2002 City Resolution whereby the TMK/Hogan team will receive from Urban Renewal and the City the sum of $250,000 for agreeing to let the City/Urban Renewal contract with Bass Pro;

(r) October 4, 2002, Defendant Hogan faxed from Oklahoma City to Defendant Elgin in Alabama the executed Urban Renewal Resolution approving the agreement with TMK/Hogan, Bricktown entertainment and Stonegate to purchase the usable portion of the West 25 Acres for less than $2 Million;

X(c): Bribery: 18 U.S.C. §201

179. From on or about May 21, 1996 through the time of filing this Complaint, the Defendants by giving things of value to public officials in order to influence said officials to cooperate in Defendants' fraudulent Scheme, violated 18 U.S.C. §201, inter alia, on the following occasions,

(i). On or about May 21, 1996, Defendants Hogan and Hogan Property bribed Urban Renewal Commissioner Hall by making Hall a 50% partner in Defendants' East Wharf development, in exchange for Hall's vote supporting Defendant TMK/Hogan team as developer of the East 26 Acres, as stated in ¶ 38 of this Second Amended Complaint;

(ii). On or about July 16, 1998, Defendants Hogan and Douglas bribed Councilman Guy Liebmann by way of holding a special "fundraiser" as stated in ¶ 158 of this Second Amended Complaint;

(iii). From about July 1998 through the time of filing this Complaint, Defendant Douglas caused the appointment of Councilman Liebmann to political positions with various City trusts, and additionally appointed Liebmann director of Second Century, in exchange for Liebmann's vote as stated in ¶ 157 of this Second Amended Complaint;

(iv). On or about December 8, 1998, Defendants Hogan and Hogan Property released a lien held by them on Hall's Fred Jones Automotive property in Edmond, Oklahoma, in exchange for Hall's Urban Renewal votes supporting Defendants, as stated in ¶ 161 of this Second Amended Complaint;

(v). On or about May 20, 1997, Defendants Hogan, Elgin, TMK/Hogan, Hogan Property, Hogan Parking, Stonegate and TDC bribed Urban Renewal Commissioner Hall by causing OKC Athletic club to become a 1/3 partner in the Parking Agreement granted by Urban Renewal to TMK/Hogan on July 28, 1997, as stated in ¶ 71 of this Second Amended Complaint;

(vi). On or about May 20, 1997, Defendants Hogan, Elgin, TMK/Hogan, Hogan Property, Hogan Parking, Stonegate and TDC bribed Bricktown Association President Tolbert, inter alia by causing BAP to become a 1/3 partner in the aforesaid Parking Agreement, as stated id. in this Second Amended Complaint;

(vii). From about January, 1996 through the time of filing this Second Amended Complaint,

Defendants Hogan, Elgin, Hogan Property, Stonegate, and TMK/Hogan bribed and continue to bribe the Urban Renewal and its Commissioners and Management, including Defendant Douglas, by leasing at a below-market rate to Urban Renewal office space at 204 N. Robinson, Oklahoma City;

(viii). On or about July 21, 1998 Defendants Douglas, Hogan and Elgin further bribed Mayor Humphreys by using their political influence and persuading the City Manager, Public Work Director and City Council to invest approximately $300,000 in public improvement surrounding a parking building in Bricktown owned by Power Alley Parking LLC, in which Mayor Humphreys holds a substantial interest. In addition, Defendants also influenced City officials to close an active portion of a street adjacent to the said Bricktown garage, and to transfer title to Power Alley all in exchange for supporting the Defendants;

(ix). From about January 1, 1996 through the time of filing this Complaint, Defendants Hogan, Elgin, Hogan Property, Stonegate, and TMK/Hogan bribed Urban Renewal Commissioner Niehols by offering and managing the Mid-American Tower building located at 20 N. Broadway in Oklahoma City, as is stated in ¶ 44 of this Second Amended Complaint;

(x). From about February, 1997, through about early part of 2001, Defendant Douglas, Hogan and Elgin further bribed Urban Renewal Commissioner Nichols by using their political influence and political position and persuading

and causing City officials to make substantial public improvements surrounding the Mid America Tower building in exchange for Nichols' support of all Defendant's.

FIRST CAUSE OF ACTION: FOR VIOLATIONS OF RICO § 1962 (b)

(Against All Defendants.)

180. For the First Cause of Action, plaintiffs repeat and re-allege each of the allegations of paragraphs 1 through 179 above, as if fully set forth herein.

181. Urban Renewal, an Oklahoma City Trust, with powers to condemn real properties due to blight, or for redevelopment purposes such as the MAPS project at issue in this Second Amended Complaint, as does the Oklahoma City Council, each constitutes an "enterprise" as that term is defined in 18 U.S.C. § 1961 (4), .

182. The said enterprises engaged in, and its activities affected interstate commerce, because they affect such projects as the aforesaid MAPS project, which affected one of the last undeveloped sites visible from the intersection of U.S. Interstate 40, the most widely used East-West Interstate in the United States; U.S. Interstate 35, the local section of which has become known as the "NAFTA Corridor," is perhaps the most widely used North-South Interstate in the United States; and the Centennial Expressway, I-235. Additionally, the site in question involved the Canadian River. The Defendants' prevention of Plaintiff's Bricktown Project Proposal thus prevented the

investment of $160 million to $200 million in this highly central location, inevitably impacting on commerce impacting on all surrounding States, as well as Mexico.

183. In violation of 18 U.S.C. § 1962 (b), defendants Hogan, Hogan Property, Bricktown–TMK/Hogan Parking, Bricktown-TMK/Hogan Entertainment, Elgin, Elgin Development Company, persons within the meaning of RICO, acquired or maintained, directly or indirectly, interest in or control over the two 18 U.S.C. § 1964 enterprises herein.

184. Defendants exercised their control over the two said enterprises herein via (a) Defendant TMK/Hogan's rental of 204 N. Robinson to Urban Renewal, as stated, inter alia, in Section X(c)(vii) of this Second Amended Complaint; (b) bribery of Urban Renewal Commissioners Hall ,as stated, inter alia, in Section X(c)(i) and (v), of this Second Amended Complaint; (c) bribery of Urban Renewal Commissioner Nichols, as stated, inter alia, in Section X(c)(ix) and (x) of this Second Amended Complaint; (d) appointment of Bricktown Property owner Talbot as both chairman of the Myriad Garden Trust and as Urban Renewal Commissioner, as is stated in ¶ 71 of this Second Amended Complaint; (e) bribery of Councilman Liebmann as stated in Section X(c)(iii) and (iv) of this Second Amended Complaint; (f) bribery of Mayor Humphreys as alleged in Section X(c)(vii) of this Second Amended Complaint; and (g) use the United States mails, in violation of 18 U.S.C. § 1341, as is stated in Section X(a) of this Second Amended

Complaint; and thus engaged in racketeering activity, as that term is defined in 18 U.S.C. § 1961 (1).

SECOND CAUSE OF ACTION:
FOR VIOLATIONS OF RICO § 1962 (c)
((against Defendant Douglas)

For the Second Cause of Action, Plaintiffs repeat 185.

and re-allege each of the allegations of paragraphs 1 through 184 above, as if fully set forth herein.

186. Defendant Douglas, as executive director of Urban Renewal, clearly violated 18 U.S.C. §1962(c) by facilitating Defendants' fraudulent Torchmark Misrepresentation, as well as Defendants' fraudulent Scheme to gain title to the publicly-acquired MAPS properties described herein, as demonstrated, inter alia, in ¶¶ 44, 56, 62, 67, 78-86, 95, 103-114, 117-119, 121-122, 124, 128, 133, 135, 136, 143, 144, 160, 163, 164, 165, 177, 178 and 179 of this Second Amended Complaint.

THIRD CAUSE OF ACTION:
FOR VIOLATIONS OF RICO § 1962 (d)
((against All Defendants))

For the Second Cause of Action, Plaintiffs repeat 187.

and re-allege each of the allegations of paragraphs 1 through 186 above, as if fully set forth herein.

188. Defendants violated 18 U.S.C. §1962(d) by conspiring together to violate 18 U.S.C. §1962(b) and (c).

FOURTH CAUSE OF ACTION:
FOR VIOLATIONS OF SHERMAN ACT
((against All Defendants))

189. Plaintiffs repeat and re-allege each of the allegations of paragraphs 1 though 188 above, as if fully set forth herein.

190. Defendants conspired with each other, and willfully, knowingly and intentionally engaged in unlawful acts and practices described above, to fabricate and create the illusion of a "legal" public bid, when in fact, the outcome of the 6/26/97 published RFP was predetermined by agreements between all Defendants. Defendants engaged in unfair, improper and illegal conduct which includes, but is not limited to the following:

(i). False & Deceptive Representation of Development Experience. Fraudulently submitting to Urban Renewal documents and information showing development experience of the Torchmark Development Corporation and representing such as the experience of TMK/Hogan's 50% partner, when in truth and fact, they knew such representation was false, as it did not reflect the development experience of the true partner - Stonegate.

(ii). False & Deceptive Representation of Financial Ability To Implement Development. Fraudulently submitting to the City and Urban Renewal documents and information showing financial ability of the Torchmark Corporation as if it were the 50% partner in TMK/Hogan, when they knew said information did not represent the financial condition of its own or the financial ability of the true partner - Stonegate.

(iii). Pre-RFP Arrangements & Agreements & To Award Contracts To TMK/Hogan. Fraudulently conspiring with each other and making pre-RFP arrangements and agreements to award the Parking and Development Agreements to the TMK/Hogan Teams.

(iv). Political Influence & Power to Use RFP Process As A Tool to Cover Pre-RFP Selection. Defendants used political influence, and, with Defendant Douglas and other unnamed coconspirators, abused official positions, and used the RFP public-bid process as a tool to cover up their fraudulent, deceptive, improper, anti-competitive and illegal activities.

(v). Cover-Up Business Relationship With City and Urban Renewal Officials Knowingly, willfully and intentionally not disclosing the business relationship

between the TMK/Hogan Parking Team, the TMK/Hogan Development team and certain public officials who had voting power and/or influence over the selection process and/or the approvals and/or voting for the Parking and Development Agreements.

(vi). False Affidavits & Testimony Executing false affidavits and giving false testimony relating to the relationships between the Defendants and public officials.

(vii). Mail & Wire Fraud In Bid-Rigging Committing mail and wire fraud in covering-up their pre-RFP agreements and arrangements.

(viii). On August 1, 1997, Defendant Douglas submitted to the Council a deliberately fraudulent copy of Defendant TMK/Hogan's July 17, 1997 proposal, incorporating numerous material changes intended retroactively to justify Urban Renewal's aforementioned July 28, 1997 selection of Defendant. The said copy additionally included irrelevant documents intended to make Defendant's said proposal have a visual appearance comparable to CCBT's July 17, 1997 Project Proposal.

(ix). False Representation About CCBT's Proposal Knowingly, intentionally and willfully, by direct statement and/or by implication, making false

representations that the CCBT and/or its $160-200 million development proposal was not "real", and/or that the CCBT Team was seeking monetary public participation in their development projects, when in fact they knew the truth that not only CCBT did not ask for public participation, but in fact, CCBT was committed to invest between $8-11 million in public improvements.

(x). Use of Media to Defame Plaintiffs [~~Defendants~~], the TMK/Hogan Team, Hogan and Douglas, willfully and maliciously used their position and influence to cause news stories to be broadcast and printed in newspapers, which contained information that was defamatory and false and/or inaccurate about the Plaintiffs and the CCBT team, especially against former Plaintiff Tal, to gain public support for TMK/Hogan's development from City officials and the public.

191. As a direct, proximate and consequent cause of the Defendants' false, inaccurate and defamatory statements, Plaintiffs BT-2000 and TTI's business and reputations have been injured. Engaging in such intentional and malicious conduct, the Defendants not only caused injuries to the Plaintiffs reputation, but were also used by the Defendants as an improper and unfair means to gain public and City support and in awarding the TMK/Hogan's Team the Contracts.

192. Defendants falsely represented during the selection process, directly and/or by implication, that Defendant TMK/Hogan not only had all the financing needed to implement their Cinema Complex project, but that TMK/Hogan was not asking for any monetary public participation, and after competitors were "eliminated", TMK/Hogan did indeed seek, and receive more than $3 million in public participation to improve their development project site, a contract to purchase the land below City's cost, and now (early 2002) the Defendants have obtained from the City approximately $18 Million to build the Bass Pro retail shop on the property they were given as a result of the illegal RFP selection.

193. Defendants knowingly, intentionally and willfully made false representations that their development included specific tenants (IMAX and others), and stated, directly or by implication that Defendant TMK/Hogan had agreements with such tenants, when in fact and truth they knew such representation was false, deceptive, and misleading.

194. Defendants knowingly, intentionally and willfully representing, directly and by implication, that the Edwards Theatre tenant needed at least 31 acres for its Cinema Complex, when in truth and fact, Defendant TMK/Hogan was committed to lease to Edwards Theatres only 3.67 acres.

195. Defendants' activities and participation in the bid-rigging and other related conduct (as described in more detail above), constitutes unlawful, improper, anti-competitive,

deceptive and unfair conduct in violation of the Sherman Act, 15 U.S.C. § 2, as well as fraud in violation of 18 U.S.C. §§ 1341 and 1343, and in furtherance of their RICO violation pursuant to 18 U.S.C. § 1 et seq. The Defendants' bid-rigging conduct also violates Oklahoma State laws 79 O.S. § 1 et seq.

196. Defendants' said anti-competitive activities affected the following channels of interstate commerce, because they affect such projects as the aforesaid MAPS project, which affected one of the last undeveloped sites visible from the intersection of U.S. Interstate 40, the most widely used East-West Interstate in the United States; U.S. Interstate 35, the local section of which has become known as the "NAFTA Corridor," is perhaps the most widely used North-South Interstate in the United States; and the Centennial Expressway, I-235. Additionally, the site in question involved the Canadian River. The Defendants' prevention of Plaintiff's Bricktown Project Proposal thus prevented the investment of $160 million to $200 million in this highly central location, inevitably impacting on commerce impacting on all surrounding States, as well as Mexico.

FIFTH CAUSE OF ACTION:
TORTIOUS INTERFERENCE WITH BUSINESS
((against All Defendants Other than Defendant Douglas)

197. Plaintiffs repeat and re-allege each of the allegations of paragraphs 1 though 196 above, as if fully set forth herein

198. Plaintiffs had an ongoing business relationship with a third party, the City, which contemplated the development by the Plaintiffs of a $160-$200 multi use projects including, but not limited to, shopping mall, entertainment, office, residential and parking facilities in the South Bricktown area of Oklahoma City.

199. Plaintiffs had a reasonable expectation of economic gain from developing the area as proposed by them and a gain of financial benefits and profit from said development.

200. During the above-referenced time, and at all times relevant to this action, the third party, the City, was an independent entity, unaffiliated with either Plaintiffs or Defendants.

Based on this business relationship with the City, and upon representations made by City officials, the Plaintiffs attracted numerous investors as well as a national developer, The Cordish Company, to enter into a partnership with Plaintiff, BT-2000 to invest, develop and implement the specific developmental designs in the South Bricktown area.

202. During the second half of 1996 up until 7/21/98, while the Plaintiffs and the City were actively and in good faith conducting negotiations for a contract in connection with the business relationship described above, Defendants, independently and in concert with each other, undertook a

willful course of conduct for the purpose of interfering with and destroying Plaintiffs relationship with the City.

203. Defendants Disturbed Plaintiffs' Business Defendants' conduct as more fully described above, was intended to, and did in fact, disrupt Plaintiffs' business relationship with the City, and which ultimately did interfere with that business relationship.

204. Defendants' Conduct Was Malicious Defendants' actions were committed with malice toward Plaintiffs and a willful desire to injure Plaintiffs economically, and with wanton disregard of Plaintiffs' rights.

205. The conduct undertaken by Defendants as described herein, caused the loss or impairment of Plaintiffs' prospective business relationship with the City, and resulted in the Plaintiff's loss of the expectancy of contract and economic gain arising from the relationship, including in the form of lost prospective advantages, lost rights to develop and profit from said development, delays and inability to develop TTI's property, and actual expenses and other costs relating to the development design and the expenses for preparation of necessary legal contracts.

206. Defendants were neither justified nor privileged to engage in the conduct described herein, which resulted in the impairment or loss of Plaintiffs' prospective business relationship with the third party, The City.

207. By reason of all Defendants' tortuous interference with Plaintiffs' business, Plaintiffs have been injured in their business and property in that: (a) BT 2000 and TTI lost and continues to lose business good will; and (b) BT-2000 and TTI have suffered and will continue to suffer diminishment in its going concern value.

208. Plaintiffs are entitled to recover from these Defendants actual damages as follows: (a) at least$200 million to BT-2000; and (b) at least $ 7 million to Plaintiff TTI plus punitive damages and costs, the cost of litigation, pre-judgment and post-judgment interest and reasonable attorneys' fees in favor of each Plaintiff.

SIXTH CAUSE OF ACTION:

CONSPIRACY TO CONDEMN BY FRAUD

((against Defendant Douglas)

209. Plaintiffs repeat and re-allege each of the allegations of paragraphs 1 though 208 above, as if fully set forth herein.

210. Defendants, in pursuit of their fraudulent Scheme, carried out the condemnation of Plaintiff TTI's 1.4 acres, which condemnation constituted a conspiracy to condemn by fraud.

211. On or about March 19, 1997, Defendants Douglas, Hogan and Elgin entered into a conspiracy among themselves and other unnamed Defendants and coconspirators,

pursuant to which scheme Defendants would illegally acquire control of Plaintiff's TTI 1.4 acres prime canal-front in south Bricktown. Defendants knew that if they would use Urban Renewal's eminent domain power their scheme would be too obvious, so they developed the following plan::

(i). Defendants used their political position and official position to persuade the City to use its eminent domain power and condemned TTI's 1.4 acres under the claim that the City needs said property for a public purposed such as public park, recreational facilities and public parking;

(ii). Defendants will use their power and influence in getting two of their "connected" appraisers to be selected by the Court as the appraisal Commissioners for said property, and to submit a very low appraisal report;

(iii). After the City gets the Court's approval for said condemnation and gets a "clean" title to said property, the City would then transfer title to the property to the Urban Renewal at no cost;

(iv). Assist City legal staff in denying and covering up their Scheme by continuously claiming in all Court proceedings and pleadings that the City, not Urban Renewal, needs TTI's property for the specific true public purposes, i.e., public park, public parking and public

recreational facilities, as alleged in the initial condemnation petition;

(v). Urban Renewal will conceal and deny the fact that title to said property was transfer to it on or about November 4, 1997, and abstain from joining the condemnation proceeding as party in interest;

(vi). Urban Renewal will hold said property until after all condemnation appeals are over, then transfer title to TTI's 1.4 acres to Defendants TMK/Hogan and Hogan Entertainment for their private development, and additionally misappropriate and convert to their own use and profit Plaintiffs' plans and design, resulting in substantial gain and profit to Defendants.

(vii). On or about October 4, 2002, in furtherance of Defendants fraudulent Scheme, Urban Renewal executed an agreement with Defendants 1-9 to sell approximately 17 acres in south Bricktown for approximately $1.95 Million and to include in such sale "package" TTI's canal-front 1.4 acres along property.

212. Defendant Douglas well knew that the City's allegation in the condemnation proceedings that it needed Plaintiff TTI's property for public use was false, and the true

intention of said condemnation proceedings was to transfer Plaintiff TTI's said property to Defendant TMK/Hogan for its private use and profit.

213. Defendant Douglas as executive director of Urban Renewal, had a fiduciary duty to Plaintiffs to have Urban Renewal join the City's condemnation action against Plaintiff to ensure that Plaintiff's property was put to public use, as was alleged in the City's condemnation petition. Defendant Douglas instead intentionally and fraudulently concealed the City's and Urban Renewal's fraudulent intent to transfer Plaintiff's said property to Defendant TMK/Hogan's use and profit.

214. Defendant Douglas additionally assisted the City in obtaining title to Plaintiff TTI's said 1.4 acres by acting in concert and aiding the City in making intentionally false and fraudulent representations to the Oklahoma State Court, including that the City needed Plaintiff TTI's 1.4 acre property for public use, when Defendant knew in truth and in fact that Defendants' intent was to transfer the property to the use and profit of Defendant TMK/Hogan.

215. Defendants' Disrupted Plaintiffs From Developing Their Canal-Front Property Defendants' obtaining TTI's property by fraudulent and illegal means disrupted TTI's and BT-2000's plans to develop their 1.4 acre canal-front property.

216. Defendants' actions in obtaining TTI's canal-front property were committed with malice toward Plaintiffs and a willful desire to injure Plaintiffs economically, and with wanton disregard of Plaintiffs' right to own, enjoy, and profit from their property.

217. Defendants' action in using their political influence on City officials, and by persuading the City to condemned TTI's canal-front property, which in the open market is worth more than five million dollars ($5,000,000), and to purchase the land from the City for one hundred sixty five thousand dollars ($165,000), was done intentionally and willfully for the purpose of making a substantial profit to the Plaintiffs' detriment.

RELIEF SOUGHT

WHEREFORE, Plaintiffs pray for relief as follows:

AS TO THE FIRST CAUSE OF ACTION

For compensatory damages for Defendants' violations of 18 U.S.C. § 1962 (b) in an amount to be determined according to proof, plus interest allowed by law, that amount to be trebled as authorized by 18 U.S.C. § 1964 (c); and For attorneys' fees and costs as authorized by 18 U.S.C. § 1964 (c).

AS TO THE SECOND CAUSE OF ACTION

For compensatory damages for Defendant Douglas's violations of 18 U.S.C. § 1962 (c) in an amount to be determined according to proof, plus interest allowed by law, that amount to be trebled as authorized by 18 U.S.C. § 1964 (c); and For attorneys' fees and costs as authorized by 18 U.S.C. § 1964 (c).

AS TO THE THIRD CAUSE OF ACTION

For compensatory damages for Defendants' violations of 18 U.S.C. § 1962 (d) in an amount to be determined according to proof, plus interest allowed by law, that amount to be trebled as authorized by 18 U.S.C. § 1964 (c); and For attorneys' fees and costs as authorized by 18 U.S.C. § 1964 (c).

AS TO THE FOURTH CAUSE OF ACTION

That Defendants be adjudged to have engaged in tortuous interference with Plaintiffs' business and that judgment against these Defendants and in favor of Plaintiffs for actual damages of at least: (a) the sum of $200 million to BT-2000; and (b) the sum of $ 7 million to Plaintiff TTI, plus punitive damages and cost, the cost of litigation, pre-judgment and post-judgment interest and reasonable attorneys' fees; and

AS TO THE FIFTH CAUSE OF ACTION

That Defendants be adjudged to have engaged in bid rigging, deceptive and unfair competition conduct in violation of Section 2 of the Sherman Act (15 U.S.C. § 2) and that judgment against these Defendants and in favor of Plaintiffs for actual damages of at least: (a) the sum of $200 million to BT-2000; and (b) the sum of $ 7 million to Plaintiff TTI, treble damages, the cost of litigation, pre-judgment and post-judgment interest and reasonable attorneys' fees.

AS TO THE SIXTH CAUSE OF ACTION

That Defendants be adjudged to have engaged in fraudulent activities in using their political influence to condemn TTI's 1.4 acre canal-front property and to then transfer the land to the TMK/Hogan Team, and that judgment against these Defendants and in favor of Plaintiffs for actual damages of at least: (a) the sum of $10 million to BT-2000; and (b) the sum of $ 16 million to Plaintiff TTI, plus punitive damages and costs, the cost of litigation, pre-judgment and post-judgment interest and reasonable attorneys' fees;

JURY TRIAL DEMANDED.

Dated: December 16, 2002.

S/Peter A. Joseph

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CERTIFICATE OF MAILING [omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) BRICKTOWN 2000, INC.; and	)
(2) TAL TECHNOLOGIES, INC.,	) Civ.-02-324-F
	)
Plaintiffs,	)
	)
-against-	)
	)
(1) RANDOLPH DAN HOGAN; (2)	)
TMK/HOGAN, a/k/a COMMERCIAL	)
REAL ESTATE SERVICES JOINT	)
VENTURE;(3) HOGAN PROPERTY	)
MANAGEMENT, L.L.C.; (4)	)
BRICKTOWN-TMK/HOGAN	)
PARKING, L.L.C.; a/k/a	)
BRICKTOWN-SMC/HOGAN	)
PARKING; (5) BRICKTOWN TMK/	)
HOGAN ENTERTAINMENT, L.L.C.;	)
a/k/a BRICKTOWN	)
ENTERTAINMENT, L.L.C.; (6) MARK)	
D. ELGIN; (7) STONEGATE	)
MANAGEMENT CO., L.L.C. (8)	)
ELGIN DEVELOPMENT COMPANY,	)
L.L.C.; (9) TDC COMPANY, L.L.C.;	)
(10) TIANA P. DOUGLAS,	)
	)
Defendants.	)

RICO CASE STATEMENT

Pursuant to this Court's Order entered October 30, 2002, Docket No. 92, Plaintiffs respectfully submit this RICO Case Statement. While the Court's said Order refers (Questions Nos. 11-14) to Plaintiffs' first Amended Complaint, Plaintiffs rely herein on their Second Amended Complaint, filed contemporaneously herewith. In accord with the Court's said Order, Plaintiffs' Statement employs the numbers and letters of the Court's Order: For the Court's and parties' convenience, each of the Court's questions is typed in italic, followed by Plaintiffs' responsive statement.

1. State whether the alleged unlawful conduct is in violation of 18 U.S.C. § 1962 (a), (b), © and/or (d).

1. Plaintiffs allege that Defendants violated 1 8 U.S.C. § 1962(b), (c) and (d).

2. List each defendant and state the alleged misconduct and basis of liability of each defendant.

(a) 2(a) Defendant Dan Randolph Hogan ("Hogan") is a principal of Defendants

TMK/Hogan; Hogan Property Management; Bricktown-TMK/Hogan Parking; and Bricktown-TMK/Hogan Entertainment. Defendant Hogan made the majority of Defendants' intentionally fraudulent 18 U.S.C. §1341

mailings and 18 U.S.C. §1343 electronic broadcasts, inter alia, to Oklahoma City officials in support of Defendants' fraudulent Scheme to (i) rig the Oklahoma City public bidding process so as illegally to obtain valuable development rights in a Metropolitan Area ("MAPS") project authorized by Oklahoma City voters in an October 1993 election; and in so doing further to (ii) prevent Plaintiffs, despite the manifestly superior qualifications of Plaintiffs and their joint venture partner, The Cordish Company, from being chosen as the City's developer for said project; and finally to (iii) acquire legal title to publicly acquired properties. Defendants' Scheme employed numerous fraudulent means, including intentionally and fraudulently representing that Defendant TMK/Hogan was backed by the $11 billion Torchmark Corporation ("Torchmark Misrepresentation"), conspiring with both their public official accomplices and other private accomplices, inter alia to condemn valuable properties belonging to Plaintiff TT1 and thereafter to transfer the said properties and other publicly acquired properties to Defendants' private use and control. Torchmark Misrepresentation.

(b) 2(b) Defendant Mark D. Elgin ("Elgin") is a partner with Hogan in a number of the Hogan family's entities and a principal of Defendants TMK/Hogan, Stonegate Management Co. L.L.C., Elgin Development Co. L.L.C. and TDC Company L.L.C. Defendant Elgin furthered Defendants' fraudulent Scheme and Torchmark

Misrepresentation, inter alia, by creating both Defendants Elgin Development and TDC Company, L.L.C. in 1999 in order retroactively to cover up and conceal said Torchmark Misrepresentation by fraudulently representing that Defendant Elgin Development is the owner of Defendant TDC and that TDC wholly owns Defendant Stonegate, the true 50% partner of Defendant Hogan Property in Defendant TMK/Hogan.

(c) 2(c) Defendant TMK/Hogan ("TMK/Hogan") is an Oklahoma partnership owned by Defendants Hogan Property Management L.L.C. and Stonegate Management Company L.L.C. It manages the property, 204 N. Robinson, Oklahoma City, in which property Urban Renewal became a tenant, at a below-market rent, approximately six months prior to Urban Renewal's. April 24, 1996 Request for Proposals describe in ¶¶ 36, et seq. of the Second Amended Complaint. It is managed by its two principals, Defendants Hogan and Elgin. TMK/Hogan has been doing business in Oklahoma since January 1, 1996. Upon information and belief, on or about November 22, 2000 TMK/Hogan changed its name to "Commercial Real Estate Services Joint Venture". TMK/Hogan may also be or have been doing business as "Stonegate/Hogan". Defendant TMK/Hogan, inter alia, is the entity put forth by Defendants as the Torchmark-backed partnership obtaining the Parking and Development Contracts described at ¶¶ 127 and 159 of the Second Amended Complaint.

(d) 2(d) Defendant Hogan Property Management, L.L.C. ("Hogan Property"), is a 50% partner in Defendant TMK/Hogan. Defendant Hogan Property participated in Defendants' fraudulent Torchmark Misrepresentation and is the entity partnered with Urban Renewal Commissioner Fred Jones Hall in business ventures including the Lake Hefner project described at Section "V", of the Second Amended Complaint.

(e) 2(e) Defendant Bricktown-SMC/Hogan Parking, L.L.C. ("Hogan Parking"), is a limited liability corporation existing under and by virtue of the laws of Oklahoma. Upon information and belief, on or about April 14, 2000, Bricktown-TMK/Hogan Parking, L.L.C. changed its name to Bricktown-SMC/Hogan Parking, L.L.C. Defendant Hogan Parking assisted Defendant TMK/Hogan in obtaining Defendants' interest in Urban Renewal the aforementioned Parking Contract.

(f) 2(f) Defendant Bricktown-TMK/Hogan Entertainment, L.L.C. ("Hogan Entertainment"), is a limited liability corporation existing under and by virtue of the laws of Oklahoma. Upon information and belief, on or about April 14, 2000, Bricktown-TMK/Hogan Entertainment, L.L.C. changed its name to Bricktown Entertainment. L.L.C. Defendant Hogan Entertainment assisted Defendant TMK/Hogan in obtaining Defendants' interest in Urban Renewal via the aforementioned Development Contract.

(g) 2(g) Defendant Stonegate Management Company, L.L.C. ("Stonegate"), is a limited liability corporation existing under and by virtue of the laws of Alabama, and has been doing business in Oklahoma. Stonegate was created on or about November 22, 1999. On or about November 24, 1999, Defendants merged Stonegate Management Corporation, which was in existence on or before January 1, 1996, the date on which TMK/Hogan began doing business in Oklahoma, with Defendant Stonegate. By facilitating Defendants' Torchmark Misrepresentation. Stonegate assisted Defendants in obtaining Defendants' interest in Urban Renewal the aforementioned Development Contract.

(h) 2(h) Defendant Elgin Development Company, L.L.C. ("Elgin Development"), is a limited liability company existing under and by virtue of the laws of Alabama, and has been doing business in Oklahoma. Defendant Elgin created Defendant Elgin Development on or about June 29. 1999, and is its president and manager.

(i) 2(i) Defendant TDC Company, L.L.C. ("TDC"), is a limited liability company existing under and by virtue of the laws of Alabama, and has been doing business in Oklahoma. Defendant Elgin created Defendant TDC on or about November 22, 1999. On or about November 24, 1999, Defendant Elgin merged Torchmark Development Corporation, an Alabama corporation created on or about June 10, 1988, with Defendant TDC. Defendants'

Torchmark Misrepresentation stated that Defendant TMK/Hogan is a 50/50 joint venture between Defendant Hogan Property and Torchmark Development Corporation, and not between Defendant Hogan Property and Defendant Stonegate, as the official Oklahoma Secretary of State's record shows.

(j) 2(j) Defendant Tiana P. Douglas ("Douglas") is a citizen of the United States and a resident of Oklahoma County, Oklahoma. She is a former assistant City manager, and during the relevant period covered by this Second Amended Complaint, defined as January 1, 1992 through the present date, served as executive director of Urban Renewal. Defendant Douglas additionally serves as executive director and/or manager of the Second Century entity described in ¶ 80 of this Second Amended Complaint. Through, inter alia, Defendant's position and influence with Urban Renewal, Defendant's husband and an entity founded by him, Triad Design Group, have obtained substantial funds pursuant to the MAPS program described in this Second Amended Complaint, as well as remunerated consulting positions with the City government. Defendant Douglas further (I) engaged in numerous 18 U.S.C. §1341 mailings and 18 U.S.C. §1343 wire fraud in support of Defendants' fraudulent Torchmark Misrepresentation; and (ii) played a central role in the bid rigging and monopoly conspiracies preventing Plaintiffs from being selected as Bricktown developer.

3. List the alleged wrongdoers, ~f any, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.

Plaintiffs respectfully request that the Court defer Plaintiffs' response to this question pending a potential future motion for leave to add party defendants.

4. List the alleged victims and state how each victim was allegedly injured.

(i) Plaintiff BT-2000 was defrauded by the Defendants' interference with BT-2000's and CCBT's $200 million development project in South Bricktown. As is demonstrated in the Second Amended Complaint, BT-2000 incurred loses including, but not limited to: (a) canceling the public offering which they previously filed with the SEC, and income anticipated to derive therefrom; (b) loss of actual investment of more than $500,000 in design and operation cost; (c) loss of projected profit it anticipated from the development project in the amount of about $200 million; (d) damages to its relationship with several investors, damages to its credit and financing ability, reputation, and its ability to secure investors for other projects it planned and anticipated to carry on; (e) damaged its relationship with The Cordish Company and Mr. Cordish and severely damaged opportunities to engaged in other projects with The Cordish Company; and, (f) loss of its lease to develop TTI canal-front properties and profit therefrom due to

Defendants taking said canal-front properties by fraudulent condemnation.

(ii) Plaintiff TTI had a contract with BT-2000 where TTI's properties would be leased to BT-2000 to be used as part of its South Bricktown development. 'FYI was defrauded and damaged because (a) Defendants stole approximately 1.4 acres of TTI's canal-front property in value of about $7 Million; (b) Plaintiff lost lease income from BT-2000's South Bricktown development project; © loss of profit-sharing income from BT-2000's projects; (d) Plaintiff lost the stock value and stock options as part of it participation in the CCBT project; (e) Plaintiff incurred losses relating to decrease in TTI's property value (other than the condemned land); (f) Plaintiff incurred losses to its own business due to the Defendants' impact on TTI's cash-flow; (g) Defendants' related activities which restricted road excess and public services to TTI's remaining 3.5 acres on the south side of I-40; and (h) Plaintiff incurred other damages due to Defendants' continuous illegal activities, including, but not limited to extensive litigation costs.

(c) **Non-Party Sooner Investment:** As is demonstrated in ¶ 49 of the Second Amended Complaint, the Sooner Investment group ("Sooner") was a victim of the Defendants and the Enterprise due to their RICO activities, as well as their Sherman and Clayton Acts violations, and was damaged by them by way that Sooner invested its resources and time in designing a development plan for the East 26 Acres and submitting said plans in response to the Urban Renewal's July 29, 1996 RFP.

Sooner Investment took this action not knowing that the bid was rigged and that the RIP process was used by the Defendants and the Enterprise as a tool in the Defendants' Scheme to cover up the fact that Defendant TMK/Hogan was pre-selected to develop the said East 26 Acres before even the publication of the 1996 RFP, just like they did in the July 17, 1997 RIP process.

5. Describe in detail the pattern of racketeering activity alleged in the complaint A description of the pattern of racketeering shall include the following information:

Respecting Question 5(a), (b) and (c), The Court is respectfully referred to Section "X" of the Second Amended Complaint. Respecting Question 5(d) and (e), the answer is no.

Respecting Question 5(f) and (g): As is demonstrated in Section "X"(a), (b) and (c) of the Second Amended Complaint, Defendants' 18 U.S.C. § 1341 mailings extended, at an absolute minimum, from June 1996 through and including October 4, 2002, nearly four and one-half years. Plaintiffs thus respectfully submit that there is both close-ended and open-ended continuity in this case. Moreover, the factual pattern stated in the Second Amended Complaint demonstrates a concerted fraudulent Scheme to rig the Urban Renewal bidding, create a monopoly, fraudulently evict both the Sooner group and Plaintiffs' CCBT partnership from participation in the MAPS project, including as an essential element thereof the condemnation and taking of Plaintiff TTI's 1.4 acres of canal-front property, and continuing to this date with the still-pending possibility of Defendants'

purchase, at a bargain rate, of essentially the entire MAPS real estate parcel.

The "pattern of racketeering activity" carried out by Defendants thus includes, first, the aforesaid 18 U.S.C. §1341 mailings (Second Amended Complaint, Section X(a)); 18 U.S.C. § 1343 wire fraud (id. Section X(b)) and 18 U.S.C. §201 bribery of public officials. Defendants' broad pattern of mail and wire fraud, combined with Defendants' bribery served to carry out the bid rigging, monopoly, and eviction of the victims from the MAPS and Urban Renewal RFP process;. as well as sealing Defendants' control over both Urban Renewal and the City Council, by assuring that key members of both entities support Defendants' fraudulent Scheme.

6. Describe in detail the alleged enterprise for the RICO claim set forth in the first amended complaint. A description of the enterprise shall include the following information [As stated above, Plaintiffs here rely on their Second Amended Complaint]:

(a) The two enterprise entities are Urban Renewal, an Oklahoma City trust, and the Oklahoma City City Council, upon information and belief a municipal corporation.

(b) The structure, purpose, function and course of conduct of Urban Renewal, consists of both its legal and proper role, inter alia, of redeveloping blighted and waste areas, so as to improve the City's public lands, and thus stimulate economic activity.

Urban Renewal's fraudulent and improper role consists in serving Defendants' fraudulent conspiracy to control the said entity. The proper structure, purpose, function and course of conduct of the City Council is to oversee the management of all aspects of City government, and to establish government policy. The City Council's fraudulent and improper role consists in approving Defendants' fraudulent conspiracy to control certain actions and decisions of Urban Renewal.

(c) Defendant Douglas is Executive Director of Urban Renewal.

(d) Plaintiffs do not rely on the doctrine of an associated-in-fact enterprise.

(e) The defendant individuals and entities are all separate from the two enterprises, as stated in ©, Defendant Douglas is an employee of Urban Renewal.

(f) Not applicable.

7. State and describe in detail whether the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

The pattern of racketeering activity and the two enterprises are separate. Urban Renewal continues to conduct legitimate and legal business activities, such as the construction of the new Federal Murrah building, and the revitalization of the

entire area damaged by the original Murrah building bombing. The City Council continues to oversee all aspects of City government. The pattern of racketeering activity described in Section "X" of the Second Amended Complaint thus does not fully account for the activities of either of the two enterprises.

8. Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

See Plaintiffs' response to Question No. 7.

9. Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering.

Based in part on Defendants' continually fraudulent promises of economic development, such as the theater complex promised by Defendants for 1998 and still not completed to this date, Urban Renewal. has received approximately *$1.5* million in Community Development Block Grants, a federal program originated by Mr. David Cordish.

10. Describe the effects of the enterprise on interstate or foreign commerce.

The Court is respectfully referred to ¶ 182 and 196 of the Second Amended Complaint.

11. If the first amended complaint alleges a violation of section 1962 (a), provide the following information: a. State who received the income derived from the pattern of racketeering activity; and b. describe the use or investment of such income.

Not applicable.

12. If the first amended complaint alleges a violation of section 1962(b), describe in detail the acquisition or maintenance of any interest in, or control of the enterprise

The Court is respectfully referred to the First Cause of Action in the Second Amended Complaint.

13. If the first amended complaint alleges a violation of section 1962(c), provide the following information: a. State who is employed by, or associated with, the enterprise; and b. state whether the same entity is both the liable 'person' and the 'enterprise' under section 1962(c).

The Court is respectfully referred to the Second Cause of Action in the Second Amended Complaint.

14. If the first amended complaint alleges a violation of section 1962(d) , describe in detail the alleged conspiracy

The Court is respectfully referred to the Third Cause of Action in the Second Amended Complaint.

15. Describe the alleged injury to business or property.

Plaintiff TTI was injured in both property and business, and the majority of Plaintiff BT2000's injuries are to its business and smaller level of injury to its leased properties in which it held options to purchase from TTI and Bricktown Grain Elevator Company at future dates. The specific injuries to both business and property are more fully described in Questions 4(i) and 4(ii) above.

16. Describe the direct casual relationship between the alleged injury and the violation of section 1962.

By their racketeering activities, the Defendants caused the Plaintiffs to lose their contracts with the City and by afterward rigging the public RFP bid, selecting and de-selecting Plaintiffs' CCBT team as co-developer of the East 26 Acres. resulted in the Plaintiffs~ lose of more than $200 million combined of actual money invested in the projects and the projected profits and business opportunity, as more fully described in Question 40) above; Plaintiff 'III was injured in the amount of more than $7 million by both the theft by the Defendants of its canal-front property, which market value is more than *$5* Million and increasing daily, and additional loss to its business venture with BT-2000's development plan in value of more than $2 Million. TTI was also injured and would continued to be injured by the decrease in value to its remaining property and other illegal activities of the Defendants as more fully described in Question 4(ii) above.

17. List the damages sustained by reason of the violation of section 1962, indicating the amount for which each defendant is allegedly liable.]

17. The damages sustained by Plaintiff BT-2000 is in excess of $200 Million as more fully described in Questions 4(u) and 16 above, and the damages sustained by Plaintiff TTI are in excess of $7 Million as more fully described in Questions 4(ii) and 16 above, all as a direct result of the Defendants violations of section 1962. At this point of the proceeding, and because level of each Defendant specific involvement in each one of the various schemes alleged in this complex case. and due the fact the conspiracy activities are usually not public record and discovery in this case is not allowed yet, the Plaintiffs, at this early part of the proceeding is unable to determine the exact amount for which each defendant is liable for. Furthermore, because of the complexity of this case and the involvement of so many Defendants and other wrongdoers, the variety of schemes, it is most likely that after conducting discovery and further investigation, the Plaintiffs may determine that some of the other wrongdoers took bigger role in the RICO activities, and if so, the Plaintiffs most likely would ask the Court for leave to add additional defendants.

Dated: New York, New York December 16, 2002.

Respectfully submitted,

S/Peter A. Joseph

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CERTIFICATE OF MAILING [omitted]

Case No.: 03-6293

United States Court of Appeals
For The Tenth Circuit

Moshe Tal, et al., Plaintiffs-Appellants, **vs.** **Randolph Hogan**, et al., Defendants-Appellees.	APPELLANTS/PETITIONERS' **JOINT PETITION FOR REHEARING**

APPELLANTS/PETITIONERS' JOINT PETITION FOR REHEARING, AND SUPPORTING BRIEF

ON APPEAL FROM CASE NO. CIV-02-234F
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA
THE HONORABLE JOSEPH P. FRIOT
UNITED STATES DISTRICT JUDGE

Dated: July 13, 2006.

TABLE OF CONTENTS

APPELLANTS' JOINT PETITION FOR REHEARING, AND SUPPORTING BRIEF ..... -1-

SUPPORTING BRIEF ..... -1-

I. REASONS FOR GRANTING REHEARING/REVERSAL ..... -1-

ARGUMENTS AND AUTHORITIES ..... -4-

II. SUMMARY OF CONTROVERSIES BETWEEN THE PARTIES AS ALLEGED IN THE COMPLAINT -4-

II. INACCURACY OF FACTUAL STATEMENTS, FACTUAL FINDINGS - AND RELEVANT SPECIFIC FACTS ALLEGED ..... -14-

III. THE PRECLUSION BASED ON THE ROOKER-FELDMAN DOCTRINE HERE IS IN OPPOSITION TO THE 2006 SUPREME COURT'S RULING IN *LANCE V. DENNIS*, AND THIS COURT'S 2006 RULINGS IN *MO'S EXPRESS, LLC V. SOUPCON* .. -21-

IV. DISMISSAL OF SHERMAN ACT CLAIMS WAS IMPROPER ..... -22-

V. THE OKLAHOMA SUPREME COURT'S 2004 RULINGS IN *MIDWEST CITY, SUPRA*, AND *HOUSE OF REALTY*

VI. OKLAHOMA'S CONSTITUTIONAL LIMITATIONS ..... -25-

(A) UNDISPUTED MATERIAL FACTS ..... -25-

VII. THE OKLAHOMA SUPREME COURT'S LATEST RULINGS (MAY 9, 2006) IN *MUSKOGEE COUNTY V. LOWERY*, 2006 OK 31, SUPPORTS THE TALS' POSITION AND JUSTIFIES VACATION OF THE DISMISSAL JUDGMENT AND CALLS FOR A REHEARING ..... -27-

VIII. NEW EVIDENCE ..... -30-

IX. *RES JUDICATA/COLLATERAL ESTOPPEL* DOES NOT APPLY WHEN *FRAUD* IS ALLEGED, AND WHEN FRAUD WAS NOT DISCOVERED AT TIME OF EARLIER SUITS ..... -31-

X. WHEN FACTS AND LAWS HAVE CHANGED, PRIOR SUIT HAS NO PRECLUSION EFFECT ON SECOND SUIT ..... -33-

XI. THE COURT FAILED TO RULE ON TAL'S PRIVITY ISSUE ..... -36-

XII. CONCLUSION ..... -38-

TABLE OF AUTHORITIES

FEDERAL CASES

Atlantic Coast Line R. Co., 90 S.Ct. 1739 . . . . . -22-

State Farm Mutual Auto Insurance Co. v. Duel, 324 U.S. 154, 65 S. Ct. 573, 89 L. Ed. 812 (1945) . . . . . -35-

Commissioner v. Sunnen, 333 U.S. 591, 601-602 (1948), -34-

Community Hospital v. Sullivan, 986 F.2d 357, 360 (10th Cir. 1993) . . . . . -34-

Doran v. Salem Inn, Inc., 422 U.S. 922, 928, 45 L. Ed. 2d 648, 95 S. Ct. 2561 (1975) . . . . . -22-

Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280 (2005) . . . . . -21-

Glass v. United States Rubber Co., 382 F.2d 378, 384 (10th Cir. 1967) . . . . . -34-

Iron Workers Local Union No.17 Ins. Fund v. Philip Morris, 29 F. Supp. 2d 801(D.C.E.D . . . . . -19-

Kelo v. City of New England, 125 S.Ct. 2655 (2005) -1-, -28-

Lance v. Dennis, 126 S.Ct. 1198 (2006) . . . . . -21-

Lawlor v. Nat'l Screen Serv. Corp., 349 U.S. 322, 327-28, 99 L. Ed. 1122, 75 S. Ct. 865 (1955) ..... -35-

McClellan v. Garland ..... -22-

Mo's Express, LLC v. SOUPCON, 441 F.3d 1229 (10th Cir. 2006) ..... -21-

OH 1998), and In re American Honda Motor Co., Inc. Dealerships Rel. Litig., 941 F. Supp. 528 (D. Md. 1996) -19-

Pelfresne v. Stephens, 35 F.Supp.2d 1064. (N.D. Ill. 1999) -31-

Pharmacare v. Caremark, 965 F. Supp. 1411, fn25 (D.C. Hawaii 1996) ..... -22-

pradling v. City of Tulsa, 198 F.3d 1219 (10th Cir. 2000), -38-

Reed v. McKune, 298 F.3d 946 (10th Cir. 2002) ..... -34-

Thomas v. Ross & Hardies, 9 F. Supp. 2d 547 (1998) .. -19-

Tribune Co. v. Abiola, 66 F.3d 12 (2d Cir. 1995) ..... -19-

Tribune Co. v. Purcigliotti, 869 F. Supp. 1076, 1098 (S.D.N.Y. 1994) ..... -19-

STATE CASES

Board of County Commissioners of Muskogee County v. Lowery, 2006 OK 31 ..... -1-, -2-, -27--29-, -31-

Burke v. Oklahoma City, 1960 OK 29, 350 P.2d 264 ... -29-

Byrd v. Marlin, 258 P.2d 649 (Okla. 1953) ..... -31-

Carris v. John R. Thomas & Assocs., 896 P.2d 522, 528 (Okla. 1995) ..... -34-

City of Midwest City v. House of Realty, Inc., et al., 100 P.3d 678 (Okla. 2004) ..... -2-

Eriksson v. Jones, 37 P.3d 823 (Okla. 2001) ..... -33-

House of Realty, Inc., v. City of Midwest City,109 P.3d 314 (Okla. 2004) ..... -2-, -23-, -24-, -26-

Miller v. Miller, 1998 OK 24 ..... -33-

Oklahoma City Airport Trust v. Huggins, 105 P.3d 344 (OK CIV APP 2004) ..... -35-

People v. McKale, 25 Cal. 3d 626, 602 P.2d 731 (1979) ..... -22-, -23-

Pierce v. State, 383 P.2d 699 (Okla.1963) ..... -24-

Ponca City v. Drummond, 1923 OK 1112, 94 Okla. 138, 221 P. 466 ..... -29-

PP20-24, 956 P.2d 887 ..... -33-

Public Service Company of Okla. v. Willis, 941 P.2d 995 (Okla. 1997) ..... -31-, -34-

Tal V Appeal (Okla. City Urban Renewal Auth. v. City of Okla. City, 2005 OK 2, 110 P.3d 550 (Okla. 2005) ..... -20-

Woodward, 549 P.2d 1207, 1209 (Okla. 1976) ..... -33-

FEDERAL STATUTES

18 U.S.C. § 201 ..... -16-

18 U.S.C. § 201(a) ..... -16-

STATE STATUTES

Okla. Const Art. 2, §§ 23, 24 ..... -31-

Okla. Stat. tit. 11, § 22-104 ..... -23-, -24-

OTHER AUTHORITIES

38 Yale L. J. 299 ..... -31-

APPELLANTS' JOINT PETITION FOR REHEARING, AND SUPPORTING BRIEF

The Appellants, Bricktown 2000, Inc.("BT-2000"), Tal Technologies Inc. ("TTI"), and Moshe Tal ("Tal") (collectively the "Tals"), respectfully petition this Honorable Court to reconsider and reverse the Published Opinion of this Court, entered on June 29, 2006 (copy attached hereto as Exhibit **"A"**). In support of this Petition for Rehearing, the Tals respectfully submit the following Brief:

SUPPORTING BRIEF

1. REASONS FOR GRANTING REHEARING/REVERSAL

1. This Court's holding that the condemnation for private and/or economic development was legal is incorrect in light of the Oklahoma Supreme Court's May 9, 2006 decision in *Board of County Commissioners of Muskogee County v. Lowery*, 2006 OK 31, __ P.3d __, wherein it was held that the United Supreme Court's decision in *Kelo v. City of New England*, 125 S.Ct. 2655 (2005) is inapplicable in Oklahoma because under Oklahoma Constitution and Statutes, private property may not be condemned (absent blight) for economic development;

2. This Court should reconsider it's reliance on the Oklahoma Court of Appeals **unpublished** Opinion in *City of Oklahoma City v. Tal Tech., Inc.*, Case No. 94,045, at 5 n.3 (Okla. Civ. App. July 31, 2001), and specifically this Court's findings that ... ***"the Oklahoma courts' determination that "public use" includes economic development does not constitute fraud,"*** and/or that ... ***"It also concluded that the City had properly condemned Tal, Inc.'s land for a valid public purpose."***, ... because this holding by the Oklahoma Court of Appeals was overruled by the Oklahoma Supreme Court's decision in *Lowery, supra*.

3. This Court's holding (directly and/or by inference) that it was legal for the City to condemn under its condemnation power and then transfer it to the Urban Renewal for use under Urban Renewal Act (including using tax funds for land improvement) is incorrect in light of the Oklahoma Supreme Court's decisions in City of *Midwest City v. House of Realty, Inc., et al.*, 100 P.3d 678 (Okla. 2004) and related cases, including *House of Realty, Inc., v. City of Midwest City,* 109 P.3d 314 (Okla. 2004), wherein it was held that under Oklahoma statutes the co-mingling of municipalities' condemnation powers with condemnation powers granted to Urban Renewal (or redevelopment) authorities - is prohibited;

4. The holding that the allegations in the Complaint failed to show a continuing threat of RICO activities was incorrect where the Complaint (and the RICO Case Statement) clearly articulated at least two other continuing RICO type activities, and an additional continuing subsequent/current RICO type activity, which are all issues raised in the pending *Qui Tam* suit of which this Court took judicial notice and cited in this Opinion;

5. The finding that the Complaint failed to show that the Defendants had an interest in or control over Urban Renewal Authority or City Council was incorrect where the Complaint contained allegations and evidence showing that **after** the two years of negotiations and public hearings, bribes and other illegal activities were undertaken (including, but not limited to bribing the Council's swing vote) to persuade public officials to alter their votes;

6. The Court failed to rule on issues properly preserved on Appeal, especially relating to the District Court's dismissal of all of Tal's personal claims by holding that Tal was in privity with the City and should have filed his personal claims in the City's prior *Qui Tam* related cases (applying *Res Judicata Doctrine*). Said holding is erroneous in that at least two

decisions of the Oklahoma Court of Civil Appeals held that **Tal was *not* in privity with the City**;

7. This Court's affirmation of the District Court's factual findings, which were inconsistent with and/or contrary to the specific allegations made in the Complaint, is inappropriate for a Motion to Dismiss under Rule 12, because such a ruling, in essence, converts the Motions to Dismiss to ones for Summary Judgment without giving the Tals the opportunity to rebut the Defendants' factual contentions, submit evidence. This is especially egregious since the District Court prevented the Tals from obtaining evidence to support their claims by prohibiting depositions and ordering a stay of discovery.

8. This Court also erred is stating that the Tals failed to allege that the Urban Renewal or City received Federal funding (or managing Federal funds) in excess of $10,000. The Court overlooked the specific allegations made by the Tals which clearly stated that Federal funds were received and that the Urban Renewal and City managing Federal projects funded with Federal funds;

9. The treatment of the Conspiracy to Condemn by Fraud Count, as an "independent" claim, and applying the *Rooker-Feldman Doctrine* thereto, is improper, as the property condemnation was only one part of a **much larger conspiracy scheme and RICO activities** - which as specifically alleged, occurred **AFTER** Tal refused to bribe public officials. Likewise, based on latest United States' Supreme Court's rulings, as well as this Court's rulings, application of the *Rooker-Feldman Doctrine* is now much narrower and it should not be applicable here under the present circumstances;

10. In general, this Court has decided questions of substance not in accord with applicable and related decisions of this Court and contrary to numerous published opinions of this Court as well as Opinions of the Oklahoma Supreme Court, the

United States Supreme Court, and other Jurisdictions (in addition to the latest Supreme Court cases cited above).

ARGUMENTS AND AUTHORITIES

II. SUMMARY OF CONTROVERSIES BETWEEN THE PARTIES AS ALLEGED IN THE COMPLAINT

The controversies of this case, as "painted" by the Appellees/Amicus (and accepted by the Courts) - i.e., that ... ***"this case is the latest dispute between*** ...[the Tals and Appellees] ***over the condemnation of*** ...[TTI's] ... ***property and Bricktown*** [2000] ***Inc's failure to acquire redevelopment rights for the area in downtown Oklahoma City known as Bricktown"***, ... does not accurately represent the true and entire controversy between the parties as specifically alleged in the Complaint,[gg] nor was there any evidence to support material factual contentions submitted by the Appellees and/or the Amicis.

The true controversies, as adequately alleged here (with particularity in the 70 page Complaint) are totally different from those presented by the Appellees/Amicis. The material facts alleged, summarizing the controversies, are:

Beginning in January 1995, Tal approached the City and submitted his proposed plan to develop an approximately $160 million dollar multi-complex structure (shopping center, hotel, museums, restaurants, numerous entertainment venues, etc.), along the southern portion of the planned MAPS Canal in South Bricktown. For said development, Tal's planned to utilized the five (5) acres owned by TTI (owned by his family trust) and an additional approximately twenty (20) acres, adjacent to TTI's property, which the City planned to purchase and utilize for surface parking (1200 cars) to support the public MAPS Projects

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[gg] "Complaint" is referred to the 12/16/03 *Second Amended Complaint*, unless otherwise stated.

(Ballpark, Arena, Convention Center, and the Canal).[1]ggg Complaint, ¶¶ 6-7, 25-26.

In addition to Tal's commercial development, Tal's 1995 proposal was also ...

> ...***"intended in part to solve the City's contemporaneous projection of a $10 million to $15 million shortfall in the City's MAPS budget."*** [The proposal offered:] (i) ***BT-2000, ... will finance canal construction in the West 25 Acres, including both necessary property acquisitions and refunds to the City of any funds already expended by the City on the project;***" ... and (ii.) ***" BT-2000 will construct in the West 25 Acres a multi-level parking facility for at least 2,000 vehicles, expandable to 3,0000 vehicles, with a guarantee to the City to charge no more than City downtown parking rates, and with a guarantee of the construction of additional parking as the facilities next mentioned*** [the shopping/entertainment complex] ***are built***;". (In brackets added). Complaint, ¶ 25.

From January 1995 through the later part of May, 1997, Tal and BT-2000 directors, architects, engineers, and corporate lawyer met with City officials as part of negotiating the contract with BT-2000 and engineering concerns. Numerous drafts regarding legal issues of the contract were exchanged. Complaint, ¶¶ 26-34, 51-53. From the beginning, City officials ... *"expressed favorable view"* of Tal's proposed plans, and ... *"Mayor Norick recommended that the City Council approve the completion of the negotiations with Plaintiffs on the terms submitted by Plaintiffs.*" Complaint, ¶ 30.

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ggg[1] The MAPS Project, as approved by the vote of the people in 1993, was limited to nine (9) specific public venues and ***DID NOT*** include ***ANY*** private development or economic redevelopment. Complaint ¶¶ 18-24.

During the contract negotiations (April, 1996), Tal ... ***"provided Mayor Norick with all requested financial information requested, including a detailed Business Plan demonstrating both the feasibility and profitability of Plaintiffs' Bricktown Project proposal***." Complaint, ¶ 33. Tal attracted national developer, David Cordish, to partner with him in the development and financing of Tal's proposed plans (CCBT partnership was formed). Complaint, ¶ 33. On May 20, 1997, after a telephone conference between Mayor Norick, Cordish and Tal, ... ***"Cordish sent a letter to Mayor Norick announcing the CCBT partnership. On or about May 21, 1996 Plaintiffs publicly revealed the CCBT partnership, including a commitment to invest $160 million to $200 million in Bricktown. News of the CCBT joint venture appeared in all Oklahoma City media***." Complaint, ¶ 54.

In the meantime, in April, 1996, the Urban Renewal Authority ("URA") published a Request For Proposals ("RFP") for redevelopment of approximately 26 acres it owned (purchased in part with Federal grants) - adjacent and east of TTI's Property and the 25 acres that the Tals were negotiating with the City. Complaint, ¶ 36. Within one month after the publication of the URA, ...

> On or about May 21, 1996, Defendant Hogan and Hogan property offered and caused Urban Renewal Commissioner Fred Jones Hall ("Hall") to become a 50% partner in said Defendants East Wharf development described in Section "W" of this Second Amended Complaint in exchange, inter alia, for Hall's vote supporting the selection of Defendant TMK/Hogan as developer of the East 26 Acres pursuant to the April 24, 1996 RFP and future RFP's issued by Urban Renewal." Complaint, ¶ 38.

The Hogan Team also influenced the vote of URA Commissioner, J. Larry Nichols ("Nichols"), by managing Nichols' Mid-American office building ... ***"at a rate well below***

market." Complaint, ¶ 44.[2]gggg In addition, the Hogan Team also misrepresented their financial ability by falsely stating that a 50% partner in their development team is the Fortune 100, publicly held, Torchmark Corporation ("Torchmark") and submitted Torchmark's Financial Statement. Complaint, ¶ 40-42, 45-48. The Hogans' false financial and partnership representations, coupled with bribing at least 2 of the 5 URA Commissioners, was part of the Hogans' scheme to damage a different competing developer (Sooner Investment) who not only presented a better development project, but also committed to invest , without subsidy, approximately $600,000 to build a lock at the beginning of the Canal along said URA's East 26 Acres (which was, due to 7 feet elevation drop, non-navigable with the main Bricktown Canal). Complaint, ¶ 49. On March 19, 1997, based on the Hogans' misrepresentations and bribery, the URA granted the Hogans the redevelopment rights to the East 26 acres.

During the latter part of 1996 and early party of 1997, ... ***"after gaining knowledge of Plaintiffs' business plan and expectation of $200 millions in profit,"***[which was given to Mayor Norick in confidentiality], ... Hogan and Douglas ... *"approached City officials and the Riverfront Development Authority with an offer to "exchange" Defendant TMK/Hogan's development rights in the East 26 Acres for development rights to the City-owned West 25 Acres"* [Complaint, ¶56], ... *"leaving the less desirable East 26 Acres to Plaintiffs."* Complaint, ¶56. The MAPS design was to restrict the navigable portion of the Canal through the City's West 25 Acres (the area where Tals planned their development), and the portion of the Canal running through the URA's East 26 Acres was non-navigable. Complaint, ¶55. City officials (City Council and City's

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[2]gggg Paragraph 44 also alleges that Nichols "purchased" the building ... "from the Urban Renewal at a fraction of market rate, after a condemnation by Urban Renewal, which condemnation ... was engineered by Defendant Douglas, Hogan, Urban Renewal Commissioner Young and ... Commissioner Nichols."

Riverfront Redevelopment authority) ... *"both rejected Defendants' said 'exchange' proposal."* Complaint, ¶58.

During a mid-March, 1997 meeting between Tal and Mayor Norick (Mayor requested that Cordish agree to the provisions of the contract drafted in April 1996 between the City and BT-2000), Mayor Norick also asked Tal to have his fuel additive manufacturing company (Appellant TTI) "sponsor" the Mayor son's race-car. Mayor Norick showed Tal a picture of his son's race car pointing out a sponsor's name indicating said sponsorship is at a value of approximately $100,000 annually. The sponsor pointed to was URA Commissioner, Fred Hall. Complaint, ¶¶ 60-61. ***"Two days after Tal rejected Mayor Norick's request for a bribe, on or about March 25, 1997, Oklahoma City Municipal Counselors filed a petition with the Oklahoma County State Court to condemn Plaintiff TTI's said 1.4 acres."*** [3] gggg Complaint, ¶ 64.

After Tal received the condemnation notice, he talked to Mayor Norick, and was assured by Norick and the City Manager that the condemnation was a "formality" and would be cancelled once BT-2000 (CCBT) was selected to develop at least a portion of the South Bricktown area. Then, on May 21, 1997, Tal was approach by Jim Brewer("Brewer") [owner of large amount of Bricktown property and well "connected" politically - especially with Mayor Norick] who told Tal that his "group" could assure ...

> "[T]hat CCBT's development proposal would receive City approval in exchange for 10% of CCBT's project revenues. Brewer stated to Tal that if CCBT did not provide 10% of its project revenues, Plaintiff TTI's condemnation would not be cancelled; Plaintiff TTI would not receive any increased compensation for its 1.4 acres; and CCBT's project proposal would not receive City approval." ... "Tal refused Brewer's request

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gggg [3] The 1.4 Acres is the most valuable portion of TT's property as it is the Canal-Front portion of the property, directly across from the Ballpark. Complaint, ¶ 63.

> for the aforesaid 10% of CCBT's project revenues and 10% of the condemnation award." Complaint, ¶¶ 72-73.

In the latter part of March, 1997, the Hogan Team conspired with Douglas and developed a scheme whereby Douglas, due to her position as Executive Director of URA, would ...

> "[I]nduce Urban Renewal to have the City transfer ownership of the West 25 Acres to Urban Renewal; Urban Renewal would cancel Defendant TMK/Hogan's previous award of development rights to the East 26 Acres; Urban Renewal would publish a new RFP; and **Urban Renewal would select Defendant TMK/Hogan as developer as for the entire 51 acres**."(emphasis added). Complaint, ¶ 62.

The conspiracy scheme also included a plan whereby Douglas would use her official position to induce URA to Commission RTKL Associates (a national urban planners) to issue a report whereby they would recommend the same "exchange" of properties as previously proposed by the Appellees and rejected by City Council. Specifically, the RTKL report would recommend that the Hogans' proposed Cinema complex should be relocated from the URA's East 26 Acres to the City's West 25 acres. The scheme also planned on making the RTKL report a mandatory guideline for the planned future RFP. Complaint, ¶ 79. The $110,000 cost of said RTKL Report was paid half ($50,000) using **Federal Community Development Block Grant** - granted to the City and URA, and the balance through "donations" from private entities/individuals, including Appellees the Hogan Group (TMK/Hogan) and URA Commissioner, Hall. Complaint, ¶ 80[4] ggggg .

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ggggg [4] The documents supporting this allegation are part of the Public Record in the related *Qui Tam* suit, and also alleged in details in the First Amended Complaint, ¶ 57.

On June 24,1997, Douglas used the "purchased" RTKL report, to induce the City Council to amend the URA's previous Redevelopment Plan (the East 26 acres) and to include the City's West 25 Acres, and appoint URA as the City's agent in selecting developers for the consolidated 51 acres, with the final approval in the City Council's power. Complaint, ¶ 82. Douglas succeeded, and on June 26, 1997, the URA Published the RFP and invited Tal and BT-2000 to participate (deadline for submission - July 17, 1997). Complaint, ¶¶ 83-85.

Not knowing that the selection of the Developer was pre-determined, Tal, BT-2000 and Cordish (the partners) submitted an extensive proposal (195 pages long - including detailed plans and drawings) on the due date (7/17/97), as explained in more detail in the Complaint,¶ 87-90. The Hogan Team submitted a 3-page proposal (with 3 page unsigned draft of the parking contract) and without any drawings. Complaint,¶ 91-92. The TMK/Hogan proposal contained the same false representations regarding their alleged 50% partner (Torchmark) and other misrepresentations, including the false statement that the Bricktown Association was their partner in the parking redevelopment portion of their plan. Complaint,¶¶ 93-95.

The URA selected four judges, which included John Gosling of RTKL (as "Chief Judge"and Appellee Douglas. Complaint,¶ 97. Although Mr. Gosling (the main judge) submitted a very positive report and recommended that the Appellees' CCBT group be selected as the long term developer for the entire 51 acre development, Douglas concealed the Gosling report from the City Council and other public officials, and issued her own purported interpretation of the judges' "findings" - recommending that the Hogan Team be selected to develop the prime navigable West 25 Acres, and selected the CCBT Team and the Hogans for future development of the East (non-navigable) 26 Acres (achieving the exact "exchange" proposal that was rejected by the City Council a few months earlier). On July 28, 1997, the URA Commissioners Approved Douglas' recommendations. Complaint,¶ 108-112. URA Resolutions

based on said recommendations were issued and approved on 7/28/97 (CCBT only a joint redeveloper of the East 26 Acres). Complaint,¶¶ 113-114.

On July 29, 1997, City Council members expressed their concerns over the news of the selections, and was upset with Douglas' failure to provide them with actual copies of the proposals received. Council requested Douglas to appear before them the following week, to present Council with the proposals received, and explain the selection process. Complaint,¶¶ 115-116. On August 1, 1997, Douglas delivered to Council the CCBT's large booklet proposal, and a **fabricated** proposal purportedly submitted by the Hogan Team - i.e., not the 6 pages submitted on the 7/17/97 deadline, but rather a larger booklet (closer to the size of CCBT's proposal) that was filled with pictures and irrelevant documents which were not created by the Hogan Team , but rather included things such as Chamber of Commerce and MAPS drawings. Complaint,¶ 117. Douglas appeared in person at the city council's meeting on August 5, 1997, and falsely stated that she was not one of the judges (did not vote). Complaint,¶ 119.

Although the Tals were selected and invited to submit supplemental information, and did so, including submitting Cordish's financial report showing net assets of $500 Million, Douglas concealed said financial report from the city council and City Manager, and in fact, falsely stated that she never received said report. Complaint,¶¶ 123-124.

From August 5, 1997 through May, 1998, Tal made numerous requests to meet with Douglas and begin negotiating the redevelopment agreement for the East 26 Acres, but Douglas refused to meet with Tal and Cordish (using different excuses). Complaint,¶¶ 126-131.

On May 11, 1998, the Defendants, in conspiracy with Bricktown Association's President, James Tolbert ("Tolbert"),

a different scheme was developed where Tolbert issue/sent a letter to City Council - recommending that the City/URA would not develop the East 26 Acres. In exchange for Tolbert's letter to Council (eliminating the CCBT Team by recommending cancellation of the East 26 Acres), Douglas, Hall, the Hogan Team and other co-conspirators, appointed Tolbert to the position of URA Commissioner (confirmed on 1/5/99).Complaint,¶¶ 133-134. Tolbert (and his company BAP) was also granted partnership interest (1/3) in the Parking Redevelopment Agreement originally granted to the Hogan Team. Complaint , ¶179(vi). At the end of the business day, May 20, 1998, Douglas sent a fax notice to Tal and to Cordish in Baltimore, Maryland, that a URA Commissioners' meeting will be held the next day, May 21, 1998, whereby a resolution would be submitted to cancel the previous selection of CCBT as co-developer of the East 26 Acres. Complaint,¶ 135. Said one-day notice violated the ten-day notice provision of the Oklahoma Public Meeting Act. Complaint,¶ 136.

Neither Douglas nor any members of the URA submitted any reports to the City Council from the **August 5, 1997** Council Meeting, until the time that Tolbert sent the May 11, 1998 letter. However, thereafter, on **May 26, 1998** ...

> Douglas submitted to the City Council and MAPS Oversight Board a resolution in support of Urban Renewal's proposed agreement with Defendant TMK/Hogan. Under the said agreement the City (i) transferred to Defendant TMK/Hogan ownership of the entire 51 acres, for which the City had paid approximately $4 million to $5 million, plus approximately **$1 million in Federal community development block grant funds**, in exchange for Defendant's promise to make less than $4 million in improvements; (ii) and further provided Defendant **$4 million of loans in community development block grants**. (Emphasis added).Complaint,¶ 137.

The majority of City Council were not in favor of Douglas' May 23-26, 1998 proposal, and in fact, ...

> From May 23, 1998 through From May 23, 1998 through June 29, 1998 five out of the nine members of the City Council were against approving Urban Renewal's grant of development rights to the entire 51 acres to Defendant TMK/Hogan. Complaint,¶ 139, and ...
>
> **The five-member majority of the Council members were in favor of a compromise proposal whereby CCBT would be selected to develop the majority of the** [51 Acres] **property, and Defendant TMK/Hogan would be given the right to develop approximately ten to eleven acres in South Bricktown for its proposed cinema complex**. (Emphasis and in brackets added]. Complaint,¶ 141.

When the Defendants realized that they would not be able to achieve City Council approval (for eliminating the Tals) they developed an additional scheme whereby they would bribe at least one council member to get the extra vote they needed. They chose Councilman Guy Liebmann ("Liebmann") as on June 26, 1998 Liebmann contacted Tal and "requested" Tal and Cordish to pay his a $50,000 bribe in exchange for his continuance support of their (CCBT) development plan and his crucial (swing) vote during the upcoming scheduled Council Meeting. Liebmann told Tal he would write the $50,000 as retirements of his lost mayoral campaign "debts", when in fact, prior public campaign filings by Liebmann shows no debts. Complaint,¶ 154. Tal refused to give Liebmann the $50,000 bribe, and on June 30, 1998, Tal refused to allow Liebmann to talk to Cordish and ask him for the same $50,000 bribe. Complaint,¶ 155.

Two (2) weeks later, on July 16, 1998 - five (5) days before the scheduled crucial July 21, 1998 Council Meeting, the Defendants, including Douglas and Hogan, and Hogan's partner

- URA Commissioner Hall, ... ***"paid Liebmann all or part of the $50,000 that Liebmann previously requested of Tal."*** Complaint, ¶158.

The allegations relating to the Appellees' conspiracy ... *"to fabricate and create the illusion of a 'legal' public bid, when in fact, the outcome of 6/26/97 RFP was predetermined by agreements between all Defendants"* ... with specific details as to numerous specific acts, was adequately alleged in the Complaint, especially in ¶¶ 190 (and subsections [i] through [x]). Also this Court should take judicial notice of a transcript of tape-recorded conversation between Tal and Brewer, where Brewer admitted that the 1997 RFP selection of the TMK/Hogan Team was predetermined - **before** the publication of the 7/17/97 RFP. [5] gggggg

2. INACCURACY OF FACTUAL STATEMENTS, FACTUAL FINDINGS - AND RELEVANT SPECIFIC FACTS ALLEGED

The Appellees' representation to all courts (including the Oklahoma Court of Appeals, the District Court, and this Court) that ... *"The final decision [to award the development contract to the Hogan Team] was made by the City Council only* ***after two years of public meetings, public notices, public hearings, and citizen review"*** is misleading and inaccurate. As shown in the summary of the allegations above, while it is true that the City Council considered the Tals' proposal for more than two (2) years (January, 1995 through May, 1997), the final RFP proposals were only considered for about one (1) year (from July 17, 1997 until granting the contract on July 21, 1998). More importantly, is that until just a few days before the "final" July 21, 1998 City Council 5/4 vote, the majority of the City Council (5 of 9) was in favor of granting the contract to the Tals'

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gggggg [5] Said evidence/transcript was filed in *Tal v. Hogan*, CJ-04-7943 - a suit where Tal re-filed the 2 state claims dismissed without prejudice in this case - as Exhibit 25 to the Tals' 12/27/05 response to all Defendants Motions To Dismiss.

Tal/CCBT Team. As shown above in the specific allegations in the Complaint, it was at that point in time that the RICO conspirators saw their opportunity and made their move(s) to get Liebmann's swing vote, via bribe, and knock Tal and the Team "out of the picture." With this timing of their actions, the RICO conspirators successfully concealed their illegal actions by making it look like a legitimate process up until the opportunity to illegally change the course of the process came along before they made their move.

Another important inaccuracy in this Opinion is the findings that all predicate acts alleged after July 21, 1998 cannot be considered by this Court[6] gggggggg What the Court overlooked is the fact that the City council's 7/21/98 Resolution (voting in favor of the 7/21/98 Redevelopment Agreement) specifically stated that in the event that the Hogan Team does not provide proof of their ability to perform within 6 months - i.e., by January 20, 1999, the contract would be cancelled and the council may award it to someone else (CCBT was the only other consideration); and the provisions of the 7/21/98 Agreement by itself contained similar provisions - i.e., cancellation for inability to perform or meet deadlines. These documents were part of the Public Record and were also attached as Exhibits to the Hogan Team's Motions To Dismiss. The same Record and Exhibits submitted by the Appellees (and Amicis) also shows that the original 7/17/98 Agreements was amended a few time - extending the deadlines which were not met. Thus, the allegations of false and deceptive representations that occurred in obtaining the amendments to the original agreement (to avoid the cancellation and granting the contract to the Tals' Team), were predicate acts that were sufficiently plead and should have been considered by the Court.

As to the bribery issue: although the Court acknowledged that ... *"In support of their* ***bribery claim under 18 U.S.C. § 201, Bricktown, Inc. and Tal, Inc. list ten actions by both the***

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gggggggg [6] Although the Court held that the Tals sufficiently alleged at least 3 Mail and Wire Fraud acts, as required.

Developers and members of the Renewal Authority, including Douglas, that arguably benefitted each other.", the Court erroneously held that ...

> **"Douglas, the Renewal Authority Commissioners and the city council are all municipal state actors with no ties to federal programs apparent from the pleadings. This is fatal to Bricktown, Inc. and Tal, Inc.'s bribery claim because they fail to adequately allege that the relevant parties are "public officials" or acting on behalf of the federal government under *18 U.S.C. § 201(a)* or *§ 666*."**

Again, it is apparent that the Court overlooked the specific allegations (cited above) that both **the City and Urban Renewal received, used, offered, and managed Federal funds** (at least 4 specific occurrences)[7] gggggggg Since the City and URA received, used, and/or managed Federal funds, all

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ggggggggg[7] (1) Complaint, ¶ 84 (5/26/98 Douglas offered to City Council and MAPS Citizens Oversight Board the URA Resolution which **approved** granting ... "**approximately $1 million in Federal community development block grant funds, in exchange for Defendant's promise to make less than $4 million in improvements; (ii) and further provided Defendant $4 million of loans in community development block grants**."[Emphasis added]); (2) RICO Case Statement, Sec. 7 (pp.8-9) (where Tals stated: *"The pattern of racketeering activity and the two enterprises are separate. Urban Renewal continues to conduct legitimate and legal business activities, such as **the construction of the new Federal Murrah building, and the revitalization of the entire area damaged by the original Murrah building bombing***.(emphasis added)); (3) ¶ 9 (p. 9) of the RICO Case Statement (the Tals also stated: **Urban Renewal has received approximately $1.5 million in Community Development Block Grants, a federal program** originated by Mr. David Cordish.(emphasis added):; (4) Complaint, ¶ 80 (stating that $50,000 of the $110,000 cost of the RTKL Report was paid by the City using **Federal Community Development Block Grant**).

City/URA public official are considered Federal Public Officials subject to Federal Bribery Statutes (as acknowledged in the Opinion). Since it is undisputed that the complaint sufficiently alleged thus the Hogan Team bribed the City's Mayors, Councilman Liebmann, the 3 URA Commissioners, and the URA itself (below market rate rent), meets the federal officials requirements. As to Douglas, the complaint sufficiently alleged that Douglas assisted the Hogan Team in the bribery acts, this should be sufficient, although the Complaint did not allege any specific bribe received by Douglas - other then receiving double salaries, and especially when considering that Douglas purchased a large horse-ranch (believed to be worth millions of dollars) and in light of the fact that the District Court stayed discovery (inability by Tals to obtain Douglas' financial information).

Note: in all pleadings and documents filed in this case, and as the Court properly acknowledged, there is no question that Urban Renewal was/is acting as an agent of the City in implementing the city's MAPS Projects. Also, it is a matter of Public Record and knowledge (well published) that the Federal Government (during the Clinton administration - 1995-1996) gave approximately $40 Million Dollars to the City of Oklahoma City (for damages relating to the Federal Murrah Building bombing), and the City utilized the Urban Renewal to manage the allocations of said Federal funds to the persons damaged.

The Control of The *Enterprise* (City/URA) Issue:

The Court erroneously held that the Tals ...

> ***"failed to adequately allege Appellees acquired or maintained an interest in or control of the Renewal Authority or the city council through the predicate acts ... Perhaps the allegations of bribery might have been sufficient to demonstrate an interest in or control***

of the Renewal Authority or the city council, *n30* ***if they had been adequately plead***". (emphasis added).

First, since the City's Mayors, Councilman and URA Commissioners meats the "specification" of Federal public officials, bribing them meets the Federal bribery Statutes; **second**, even just the single allegation that the Hogan Team, with the assistance of Douglas and other URA Commissioners (Hall and Tolbert) bribed Councilman Liebmann - i.e., making campaign contribution specifically **IN EXCHANGE for his swing vote** (5/4), that fact by itself (without even considering bribing the Mayors or other council-person), i.e., gaining the **swing vote**- as properly alleged (cited above), is sufficient to demonstrate how the Defendants gained control of the City Council[8] gggggggggg **third**, the specific allegations in the

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gggggggggg [8] Enclosed as Exhibit **"B"** hereto are inserts from the Deposition of Councilman Jack Cornett where he testified that Liebmann admitted to him that he changed his vote (on July 21, 1998) because ... ***"I'm sure that he [Liebmann] told me that the reason he switched his vote was they [Hogan Team, Douglas and Hall] had a fundraiser for him***." Said inserts were submitted to the Oklahoma County District Court in the related 2003 *Qui Tam* suit (CJ-03-2826)- i.e., Exhibit 42 to Tal/THG's 12/30/03 Supplemental Brief in Support of their Motion for New Trial (relating to the 2005 Supreme Court's remand cited by this Court in this Opinion - i.e., *Tal V*). Said 12/30/03 Supplemental Brief contained 50 Exhibits which further supports the Tals' allegations of self-dealing, conflict of interest, sale of the subject Bricktown properties to the Hogan Team below cost and market value; the unlawfulness of the $250,000 paid by the City to the Hogan Team (ruled by the trial court in favor of Tal/THG), as well as evidence supporting the Bas Pro alleged unlawful subsidy (about $20 million) which further demonstrate that the Appellees here continuing their RICO type activities, including conspiracies, and that such activities has been part of their "normal" way of conducting their businesses. Since these evidentiary documents are part of Public Record, appellant respectfully asks this Court to consider/review these documents and take judicial notice. Due to the large volume of the 12/30/03 Brief/exhibit and the limited

Complaint that the Hogan Team has personal business relationship with at least three (3) out of the five (5) URA Commissioners and getting Douglas to use her official capacity in assisting them in achieving their goals, sufficiently demonstrate the manner and method for which the Hogan Team gained control of the URA; **fourth**, since neither the City nor the URA are the type of entities that any person may get control of through ownership or stock acquisitions, the references in the Opinion regarding ownership control of an Enterprise, are irrelevant.

Actual control of the enterprise is not always required to demonstrate RICO violations under §§ 1962(c). See, *Thomas v. Ross & Hardies*, 9 F. Supp. 2d 547 (1998); *Tribune Co. v. Purcigliotti*, 869 F. Supp. 1076, 1098 (S.D.N.Y. 1994), aff'd sub nom; *Tribune Co. v. Abiola*, 66 F.3d 12 (2d Cir. 1995); *Iron Workers Local Union No.17 Ins. Fund v. Philip Morris*, 29 F. Supp. 2d 801(D.C.E.D. OH 1998), and *In re American Honda Motor Co., Inc. Dealerships Rel. Litig.*, 941 F. Supp. 528 (D. Md. 1996) (***"if plaintiffs have alleged a sufficiently direct injury resulting from [defendants'] bribery scheme, they have satisfied the proximate causation requirement, difficulties of quantification and allocation notwithstanding.***" *Id.* at 544. (Emphasis added); cited in *Iron*, at 821-822.

The Holding that Appellants Failed ... *"to show a continuing threat to other parties from the alleged RICO activities."*. The Court overlooked the specific allegations of at least five (5) other RICO type activities: **(1)** the unlawful manner the Hogan Team obtained the 1992 East Wharf Development project [making Urban Renewal Commissioner, Fred Hall a 50% partner in the contract awarded) - Complaint, ¶ 38, 171-176; **(2)** the 1996 RFP (the unlawful manner obtaining the contract against Sooner Investment company) - Complaint, ¶ 49; **(3)** the subsequent 2002-2003 (city subsidizing more than $18 Million to develop/construct the "deal" brought

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time to reproduce them, the Appellant respectfully request the Court accept the filing of these documents a few days late.

by the Hogan Team and City paying the Hogans the sum of $250,000 for finders fee - under the false representation that the payment was to reimburse the Hogans for environmental work which the Hogans never performed or paid for) - Complaint, ¶¶ 166-168; **(4)** the 2002-2003 new Bricktown Parking contract (the unlawful manner for which the Hogan Team in partnership with URA Commissioner Tolbert gained a contract for City's 2500 cars parking spaces in Bricktown for the lease sum of $1,000 per year) - Complaint, ¶ 169; **(5)** the subsequent 2002 purchase by the Hogans from the City/URA properties in Bricktown for a **negative** amount of $2 Million (i.e., Hogan will pay about $2 million and the City will reimburse them the sum of $4 Million) - Complaint, ¶ 170.

Interestingly, in its Opinion in this case, this Court cited the *Tal V* Appeal *(Okla. City Urban Renewal Auth. v. City of Okla. City,* 2005 OK 2, 110 P.3d 550 (Okla. 2005)) [9] gggggggggg and acknowledged that ... ***"The Oklahoma Supreme Court recently***

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gggggggggg [9] In *Tal V*, Tal and Taxpayers for Honest Government, Inc. ("THG") asserted several *Qui Tam* claims: (1) that the $25 million dollar subsidy of the Bass Pro Shop with tax funds is unlawful; (2) the $250,000 payment for false environmental work (finder's fee) is unlawful; (3) Sale of Bricktown properties to the Hogans below cost is unlawful; (4) Redevelopment parking contract is unlawful (especially as Urban Renewal Commissioner James Tolbert admitted to being a partner in the contract awarded), including the millions of dollars granted to improve the Bricktown property (especially as Urban Renewal Commissioner Fred Hall has person interest in the property/development); (5) Fraudulent Representations - Makes All Transactions With The TMK/Hogan Team - Unlawful and Invalid; (6) Writing Deceptive "Legal" Documents, and Conspiracy To Cover The True Intent - Misappropriations of Millions of Tax Funds - Fraud - Unlawful; (7) Anti-Competition and Monopoly Law Violations (regarding Bass Pro contract). The Supreme Court rules that all these issues must be fully litigated and that the trial court erred in granting partial summary judgments in favor of the City (premature). The case is still pending.

dismissed as premature an appeal from summary judgment in favor of the City and the Renewal Authority involving the validity of the underlying transactions." As stated above, this case alleges similar RICO Type unlawful activities, only, in that case, the claims are *Qui Tam* type (misappropriations of Tax funds). As reflected by the Public Record, all of the Defendants/Appellees, including Amicis in this case - are parties to the pending State *Qui Tam* case. The *Qui Tam* case further shows the continuation of the Hogans' control of the City Council and Urban Renewal Commissioners (and the officials "legally" managing the Enterprise).

3. THE PRECLUSION BASED ON THE ROOKER-FELDMAN DOCTRINE HERE IS IN OPPOSITION TO THE 2006 SUPREME COURT'S RULING IN *LANCE V. DENNIS*, AND THIS COURT'S 2006 RULINGS IN *MO'S EXPRESS, LLC V. SOUPCON*

The circumstances and facts alleged in this case (as explained above); the fact that the condemnation issue is only a small part of the overall RICO activities alleged, coupled with the fact that only one (1) out of the thirteen (13) parties named in this case - and the Oklahoma limitations as to what may be litigated in Eminent Domain cases (only direct condemnation damages allowed); the fact that the original condemnation suit is still pending, - the latest U.S. Supreme Court's as well as this Tenth Circuit Court's rulings which **narrows** the application of the *Rooker Feldman doctrine* - should apply to this case - thus, the Court's affirmation of the District Court's dismissal of this case based on Rooker-Feldman, should be reversed. See, *Lance v. Dennis*, 126 S.Ct. 1198 (2006); *Mo's Express, LLC v. SOUPCON*, 441 F.3d 1229 (10th Cir. 2006). In *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005) where the Supreme Court held:

> When there is parallel state and federal litigation, *Rooker-Feldman* is not triggered simply by the entry of judgment in state court. This Court has repeatedly held that "the pendency of an action in the state court is no

bar to proceedings concerning the same matter in the Federal court having jurisdiction." *McClellan* v. *Garland*, 217 U.S. 268, 282, 54 L. Ed. 762, 30 S. Ct. 501 (1910); accord *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 928, 45 L. Ed. 2d 648, 95 S. Ct. 2561 (1975); *Atlantic Coast Line R. Co.*, 398 U.S., at 295, 26 L. Ed. 2d 234, 90 S. Ct. 1739. Id., 455-456.

4. DISMISSAL OF SHERMAN ACT CLAIMS WAS IMPROPER

In *Pharmacare v. Caremark*, 965 F. Supp. 1411, fn25 (D.C. Hawaii 1996) the court held that:

> The Court concurs in Defendants' decision finding that bribery, mail fraud and antitrust violations, if true, would constitute an unfair business practice. See *People v. McKale*, 25 Cal. 3d 626, 602 P.2d 731 (1979) (holding that statute applies to wrongful business conduct in whatever context.) (Emphasis added). *Id.*, *Pharmacare*, at fn25.

In the present case there were sufficient allegations that all contracts were obtain through bribery, fraud and anti-trust violations, at least under Rule 12 Motion to Dismiss standards, the dismissal of the Sherman Act violation should be reversed

5. THE OKLAHOMA SUPREME COURT'S 2004 RULINGS IN *MIDWEST CITY, SUPRA*, AND *HOUSE OF REALTY*

Here, in the prior litigation (both condemnation and this Federal Suit), the Defendants relied on the Oklahoma Court of Civil Appeals 7/31/01 unpublished Opinion , and especially the following "findings":

> That the Plaintiff's [City's] public purposes as shown in its "Resolution of Necessity" and City Ordinance No. 52-23 for ***"Maps Infrastructure/Parking and public***

> ***MAPS facilities, parks, and recreational purposes***" are authorized by law pursuant to Article 2, Section 24, Oklahoma Constitution; 27 O.S. 1991 § 5; 11 O.S. 1991 § 22-104; 11 O.S. 1991 § 32-101 to 32-103; 11 O.S. 1991 § 33-101 and 33-103; and 11 O.S. 1991 § 36-401.
>
> In a few words, the city had a valid public purpose for acquiring the lots and had discretion to devote the lots to purposes within the MAPS project, ***including redevelopment.*** (Emphasis and in brackets added). *Id.*, Opinion, p. 9.

The above quoted portion of the 7/31/01 Oklahoma Court of Appeals's ruling and the specific *"findings"* that the City's Eminent Domain "power" includes a ***"discretion"*** to ... ***"devote"*** a condemned property by a municipality ... ***"to any of several purposes within the MAPS project, including redevelopment"*** was overruled by the Oklahoma Supreme Court in the two related *Midwest City/House of Realty* cases, *supra.* As held by the Oklahoma Supreme Court, Oklahoma Statutes provide **different** eminent domain powers to municipalities than eminent domain powers provided to Urban Renewal Authorities and these two different powers cannot be co-mingled in one particular project.

The Record here is clear and **undisputed**: **the City - not Urban Renewal** - initiated the **March 25, 1997** condemnation proceedings, and the URA **never** joined the City in the condemnation proceedings (*See* OSCI Docket Report- CJ-97-2034). Also important to note that the purported ***"MAPS Redevelopment Plan"*** was adopted by the City on **June 24, 1997 - three (3) months after the City's condemnation proceeding was filed**. In short, **at the time the condemnation proceeding was filed-there was no MAPS Redevelopment Plan in existence** thus, the subject **3/25/97** Condemnation **could not** have been instituted for the **purported** purpose of implementing the **6/24/97** MAPS' Redevelopment Plan. This

undisputed fact further supports the Tals' allegations of conspiracy to condemn by fraud.

In *Midwest City, supra,* the Oklahoma Supreme Court ruled on 6/29/04 that ... **a municipality exercising power pursuant to Okla. Stat. tit. 11, § 22-104 is not given an implied eminent domain power**. The court explained that .... "**the Legislature has tied the power of eminent domain for an economic public purpose to removal of blight when municipalities and public trusts jointly create such projects, and a municipality is not possessed with an unfettered discretion to condemn property for economic redevelopment projects outside of the scope of statutory schemes that the Legislature has provided for removal of blighted property.**" (emphasis added). The Oklahoma Supreme Court further held that:

> The Legislature has expressed a public policy to provide certain benefits to landowners when their property is taken for economic development by the concerted effort of municipalities and their public trusts. The City of Midwest City has failed to point to any public policy that would support its argument that the Legislature did not want to provide such benefits when a municipality is the sole named party seeking to condemn property for economic development engaged in by a municipality and an associated public trust.. *Id., Midwest*, at 689. (These findings were reaffirmed 6 months later [Dec. 2004] in *House of Realty, supra*).

The 2004 Oklahoma Supreme Court Midwest/House of Realty rulings in fact, **overturned** the 7/31/01 Court of Appeals' rulings relied/cited in this Opinion.

It is clear here that the Court of Appeals' unpublished 7/31/01 "Opinion" is in opposition to established Oklahoma Constitutional and statutory provisions, especially the "finding" that Municipalities condemnation powers **"includes redevelopment"**. As previously held by the Oklahoma

Supreme Court, a lower courts' ruling which *"contravenes"* constitutional or statutory provisions, is invalid. *Pierce v. State,* 383 P.2d 699 (Okla.1963) (We have held that the district court is without power to make a rule of court which contravenes any constitutional or statutory provision on the same subject). Thus, the 7/31/01 Court of Appeals' unpublished Opinion is **invalid** on its face and **unenforceable**.

6. OKLAHOMA'S CONSTITUTIONAL LIMITATIONS

In it's 7/31/01 unpublished Opinion, The Oklahoma Court of Civil Appeals claimed the subject **condemnation by the City - for "Redevelopment"** - is authorized by law pursuant to Article 2, **Section 24** of the Oklahoma Constitution. This statement is erroneous. Article 2, Section 24 does not even relate to what purposes a condemned property may be used for, but strictly deals with "just Compensation" provisions (private property shall not be taken or damaged for public use without just compensation). The Appellate Court ignored Section 23, of Article 2 of the Oklahoma Constitution which states:

> No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner, except for private ways of necessity, or for drains and ditches across lands of others for agricultural, mining, or sanitary purposes, in such manner as may be prescribed by law.

(A) UNDISPUTED MATERIAL FACTS

(1) Oklahoma Statutes provide very limited condemnation powers to municipalities and **does not** include condemnation for ***"redevelopment"***. 11 O.S. §§ 22-104/105;

(2) Article 2, Section 23 of the Oklahoma Constitution **does not** allow condemnation of private property (with or without compensation) for private use (unless by consent of the

owner). It is undisputed here that the Tals **did not** consent to the condemnation;

(3) The purported MAPS Redevelopment Plan **did not exist** at the time the City Council issued the **2/4/97** Resolution of Necessity, nor when the condemnation suit was filed **(3/25/97)**, and the MAPS Redevelopment Plan was "adopted" by the City and URA on **6/24/97 - Four (4) months after** the Necessity Resolution, and **three (3) months after** the condemnation suit was filed;

(4) While 11 O.S. § 38-111 (Urban Renewal Act) provides the URA with a power to condemn property for private redevelopment, **it is undisputed** that here, **the City, and NOT URA brought the condemnation proceedings**;

(5) Even if assuming, *arguendo*, that the City may combine it's condemnation power with that of Urban Renewal (which ***is not*** allowed - see, *Midwest, supra*), there is nothing in the subject condemnation suit that shows any allegations that the subject property was ***"blight"*** nor was any evidence introduced to show that the subject property is ... "**insanitary**, **unsafe**, or **substandard condition of the premises**" - which are **prerequisite requirements** for invoking the Urban Renewal's condemnation power pursuant to 11 O.S. § 38-111(A)(B);[10]

(6) It is undisputed here that neither the City nor Urban Renewal **ever** gave the Tals any notice that their property was included in the 6/24/97 MAPS Redevelopment Plan (prior notice that one's property is being subject to a Redevelopment Plan is a Due Process requirement);

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[10] The subject property is located in one of the city's prime spots - along the Bricktown Canal. No buildings were ever erected on the property and there was, therefore, no dilapidation or health hazard. Clearly - no blight existed.

(7) It is also undisputed that the original MAPS projects plan (adopted by the vote of the people on December 13, 1993) and the specific MAPS Master Plan (adopted subsequently on or about January, 1994) **did not** include the subject property in any MAPS Projects;

(8) The Tals' allegations of conspiracy to condemn, and the specific allegations that the 7/17/97 RFP process was ***"rigged"***, and that the ***"deal"*** to grant the Hogan Team the redevelopment "rights" was pre-arranged months **in advance** of the RFP is adequately supported by admissible evidence. *See* copy of relevant pages from a tape-recorded conversation between Tal and Mr. Jim Brewer (one of the Hogan Team's partners in the parking redevelopment agreement) - Exhibit "A".

VII. THE OKLAHOMA SUPREME COURT'S LATEST RULINGS (MAY 9, 2006) IN *MUSKOGEE COUNTY V. LOWERY*, 2006 OK 31, SUPPORTS THE TALS' POSITION AND JUSTIFIES VACATION OF THE DISMISSAL JUDGMENT AND CALLS FOR A REHEARING

On May 9, 2006, the Oklahoma Supreme Court issued an opinion in the case of *The Board of Commissioners of Muskogee County v. Lowery*, 2006 OK 31, __ P.3rd ___. [11] Not only are the condemnation circumstances in the *Lowery* case very similar to those present in this case (condemning private property for the benefits of another private entity), but most importantly, the Oklahoma Supreme Court's

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[11] Although when this Opinion was issued originally (5/9/06), it stated that it was not released for publication yet, it is important to note that pursuant to the Oklahoma Supreme Court Docket, Mandate was issued on June 1, 2006, and on Monday, June 12, 2006, the Court sent a Release Card to Westlaw. *See* OSCN, Appeal No. DF-98361.

interpretation of the relevant Oklahoma Constitution provisions and applicable Statutes was **identical** to the Tals' interpretations and further supports the Tals' position and legal contentions, where, in summary, the Court held that:

> **[T]he takings ... are impermissible takings of Landowners' respective private property to confer a private benefit on a private party, Energetix, in violation of *Article 2, § § 23 & 24 of the Oklahoma Constitution*. We further hold that economic development alone (not in connection with the removal of blighted property) does not constitute a public use or public purpose to justify the exercise of eminent domain as a matter of Oklahoma constitutional law, nor does it satisfy the public purpose requirement of *27 O.S. 2001 § 5*."** *Id., Lowery,* at ¶ O.

Most importantly, in *Lowery, supra*, the Oklahoma Supreme Court specifically stated that pursuant to Oklahoma constitutional and relevant Oklahoma Statutory provisions, the U.S. Supreme Court's rulings in *Kelo, supra*, are inapplicable in Oklahoma. If anything, the Oklahoma Supreme Court concurred with the *Kelo*'s dissenting Justice (O'CONNER). Nevertheless, in *Lowery* the Oklahoma Supreme Court explained and held:

> To the extent that our determination may be interpreted as inconsistent with the U.S. Supreme Court's holding in *Kelo v. City of New London*, **today's pronouncement is reached on the basis of Oklahoma's own special constitutional eminent domain provisions, *Art. 2, § § 23 & 24 of the Oklahoma Constitution*,** which we conclude **provide private property protection to Oklahoma citizens beyond that which is afforded them by the *Fifth Amendment to the U.S. Constitution*.** In other words, we determine that **our state constitutional eminent domain provisions place more stringent limitation on**

governmental eminent domain power than the limitations imposed by the *Fifth Amendment of the U.S. Constitution*. n19 We join other jurisdictions including Arizona, Arkansas, Florida, Illinois, South Carolina, Michigan, and Maine, which have reached similar determinations on state constitutional grounds. n20 Other states have similarly restricted the government's eminent domain power through state statute. n21 (emphasis added). *Id., Lowery*, at ¶ 19.

* * *

We adhere to the strict construction of eminent domain statutes in keeping with our precedent, mindful of the critical importance of the protection of individual private property rights as recognized by the framers of both the U.S. Constitution and the Oklahoma Constitution. If we were to construe "public purpose" so broadly as to include economic development within those terms, **then we would effectively abandon a basic limitation on government power by "wash[ing] out any distinction between private and public use of property-and thereby effectively delet[ing] the words "for public use" from [the constitutional provisions limiting governmental power of eminent domain.]"** *Kelo v. City of New London, 125 S.Ct. 2655, 2671, 162 L. Ed. 2d 439 (2005)* (O'Connor, J., dissenting). **In our view, the power of eminent domain should be exercised with restraint** n13 and we therefore construe the term "public purpose" narrowly specifically in this context. (Emphasis added). *Id., Lowery*, at ¶ 11.

Although in *Lowery, supra*, Muskogee County condemned the property for the purpose of installing a water pipeline, because the beneficiary of the pipeline was primarily one private company, the Oklahoma Supreme Court found such does not meet the public purpose criteria, and further held that when eminent domain proceeding's are initiated for specific public

use, the condemning authorities must adhere to the specific claimed use. In that regard, the Lowery Court stated:

> It is clear that the Water District **could not contract away, surrender or alienate its own eminent domain power to another entity, as the right of eminent domain is inalienable**. *Burke v. Oklahoma City, 1960 OK 29, 350 P.2d 264; see also Ponca City v. Drummond, 1923 OK 1112, 94 Okla. 138, 221 P. 466* **(noting the rule that where property is taken for a particular public purpose, such right of way or easement is limited to the purposes of the same character of the original public use)**;. (emphasis added). *Id., Lowery*, at ¶ 12.

Here, in the initial condemnation proceedings, the City specifically claimed it was condemning the Tals' property for ... *"public parking, public park, and public MAPS Infrastructure."* Using Tals' condemned property and then transferring it to Urban Renewal - which thereafter transferred it to the Hogan Group (sold recently to a private company owned by country singer, Toby Keith (MacDaddy enterprises, LLC), for restaurant/club - clearly is not even close to the specific use declared by the City in i's condemnation proceedings against Tal/TTI (See City's Petition, CJ-97-2034).

Since the City failed to use the condemned property for the particular public purpose alleged, pursuant to the Oklahoma Supreme Court rulings in *Lowery, supra* (citing *Burke v. Oklahoma City,* 1960 OK 29, 350 P.2d 264; and *Ponca City v. Drummond,* 1923 OK 1112, 94 Okla. 138, 221 P. 466), the condemnation of the Tals' property is unlawful, unconstitutional and unauthorized. The City (controlled by the Hogans) clearly abused it's eminent domain "power" and the Tals are entitled to the return of their property, quiet title and related damages. Accordingly, all subsequent title transfers of the subject property - i.e., from the City to Urban Renewal' from Urban Renewal to the Hogan team, and from the Hogans to MacDaddy - are

unconstitutional and unlawful. Such ILLEGAL supports the Tals allegation of the conspiracy between the Defendants and control of the Urban Renewal and the City enterprises.

VIII. NEW EVIDENCE

Subsequent to filing this Appeal (and Briefs), new evidence shows that on November 8, 2004, the Hogan Group sold only a small portion of the Tals' condemned property (0.3 acre out of the 1.8 acres condemned), for $1.5 Million. It is important to note that in this case, the City claimed that the condemnation of 1.4 acres of Tal's property for $50,000 was "just compensation" and/or "fair market value" and all opponents challenged the Tals' allegations that the subject property's true value is in excess of $7 Million Dollars. However, based on the evidence discovered after the filing of this Appeal, and as reflected by the Oklahoma County Record (selling 0.3 acre of the condemned property for $1.5 Million), by their own sale-price, the true value of the 1.4 acres condemned is much closer to the figure asserted by the Tals in their Complaint here - i.e., if 0.3 acre is worth $1.5 million, then the 1.4 acres is worth $7 Million - as alleged by the Tals. The total property condemned (1.8 acres) is worth $9 Million Dollars. (Public Record should be considered and the Court respectfully requested to take judicial notice of these facts).

IX. *RES JUDICATA/COLLATERAL ESTOPPEL* DOES NOT APPLY WHEN *FRAUD* IS ALLEGED, AND WHEN FRAUD WAS NOT DISCOVERED AT TIME OF EARLIER SUITS

In *Commissioner, supra,* the United States Supreme Court held:

> The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, **absent fraud or some other factor invalidating the judgment.** See Von Moschzisker,

"Res Judicata," 38 Yale L. J. 299; Restatement of the Law of Judgments, § § 47, 48. (Emphasis added).

In *Public Service Company of Okla. v. Willis,* 941 P.2d 995 (Okla. 1997) the Court stated:

> It is undisputed that private property may not be taken or damaged by the condemning agency unless the taking or damage is necessary for the accomplishment of a lawful public use. Okla. Const Art. 2, §§ 23, 24. *Id.*, 999.
>
> The necessity, expediency and propriety of exercising the power of eminent domain are questions of **general public policy** and are governed by statute. *Arthur v. Board of Com'rs., supra; Luccock v. City of Norman, supra.* A valid declaration of necessity by the appropriate body will be viewed as conclusive by the courts **in the absence of a showing of *actual fraud, bad faith, or an abuse of discretion by the condemning authority*.** *Rueb v. Oklahoma City, supra; Luccock v. City of Norman, supra.* (Emphasis added) *Id.*, at 1000.

Res Judicata is inapplicable when ***fraud*** is alleged and plaintiff seeks to vacate judgment obtained by fraud. See, *Byrd v. Marlin*, 258 P.2d 649 (Okla. 1953).

Also see, *Pelfresne v. Stephens*, 35 F.Supp.2d 1064. (N.D. Ill. 1999), where almost identical circumstances were present. In *Pelfresne*, the city/village initiated a condemnation proceeding under its eminent domain power, under the guise of "public purposes", and then transferred the property to a favorite private developer who had business relations with the Mayor and other public officials. The court denied the defendants' motion to dismiss and sustained the complaint. Here, the Tals alleged that the condemnation and transfer of the subject property to the Hogan Team was "tainted" with official misconduct, self-dealings, and specifically alleged that certain public officials

have business relationships with the Hogan Team members - including personal business interests in the property and the entire Bricktown area development.

It is also clear from the Record, that until such time that the Warranty Deeds were filed with the County Clerk (i.e., the **11/8/04** Transfer of Title to Defendant MacDaddy and the **10/4/02** Transfer of Title to Bricktown Entertainment), which clearly **proved** that the subject condemned property was intended to be used **exclusively for private business gain**, there was no ***conclusive*** evidence available in the Public Record that would be as strong/admissible to support the Tals' conspiracy/fraud allegations (alleged rumors and private use implied in the Redevelopment Agreements were highly contested by the Defendants in all prior litigations). The Record **NOW** (undisputed Deeds filed with the County Clerk) sufficiently supports the Tals' conspiracy to defraud allegations. It is also now **very clear**, that the agreements, negotiations, and "deals" relating to the "chain" of property transfers, were made months (if not years) **prior** to the actual filings of these Deeds with the County Clerk (especially during the time period that this case was pending before the District Court, but the Court did not allow the Tals to conduct discovery). See 6/13/02 Order disallowing Discovery in the this suit. Also *see*, Brewer/Tal Telephone conversation Transcript (Exhibit **"A"**) Thus, the Defendants and Amicis' contentions that the Tals' counts relating to the unlawful condemnations claims are barred by *Res judicata* or by the statute of limitations are unsupported by the true facts and Record. Likewise, the final ultimate use of the property for **exclusive private benefit/profit** - i.e., the **11/8/04** Deed Transfer to MacDaddy - **did not even exist at the time the two prior suits were pending**. Thus, *Res Judicata* or *Collateral Estoppel* cannot possibly be applied.

There is no doubt that if the alleged unlawful agreement existed at the time of the prior litigations, they were held (secretly) by the Defendants. In *Woodward*, 549 P.2d 1207, 1209 (Okla. 1976) the Oklahoma Supreme Court held that:

> **Where means of discovering fraud are in hands of party defrauded and defrauding party has not covered up his fraud to extent it would be difficult or impossible to discover, party defrauded will be deemed to have had notice of fraud from date means of discovering such fraud came into his hands and fraud will be deemed to have been discovered upon that date.** [citations omitted] (emphasis added). *Id.*

X. WHEN FACTS AND LAWS HAVE CHANGED, PRIOR SUIT HAS NO PRECLUSION EFFECT ON SECOND SUIT

In *Commissioner v. Sunnen*, 333 U.S. 591, 601-602 (1948), the United States Supreme Court rejected the general application of collateral estoppel (refusing to apply an estoppel when two tax cases presenting the same issue arose from "separable facts") and held:

> [I]f the relevant facts in the two cases are separable, even though they be similar or identical, **collateral estoppel does not govern the legal issues which recur in the second case.** n7 Thus the second proceeding may involve an instrument or transaction identical with, but in a form separable from, the one dealt with in the first proceeding. In that situation, a court is free in the second proceeding to make an independent examination of the legal matters at issue. (Emphasis added). *Id.*, at 601-602.

Also see, *Eriksson v. Jones*, 37 P.3d 823 (Okla. 2001), where the Oklahoma Supreme Court held that claim preclusion ... **"doctrine does not apply in cases where a party in a later case asserts a claim that was not yet available to him in earlier litigation between the parties."**(emphasis added), citing: *Miller v. Miller*, 1998 OK 24 PP20-24, 956 P.2d 887.

In *Spradling v. City of Tulsa,* 198 F.3d 1219 (10th Cir. 2000) this Court relied on the U.S. Supreme Court rulings in *Sunnen, supra*, and further clarified and held:

> The doctrines of collateral estoppel and res judicata, however, apply only in cases where controlling facts and law remain unchanged. [citing *Commissioner, supra*. Consequently, res judicata and collateral estoppel are inapplicable where, between the first and second suits, an intervening change in the law or modification of significant facts create new legal conditions. *Id.* The Supreme Court decision in *Auer* constitutes an intervening change in the law sufficient to render collateral estoppel and res judicata inapplicable to the present case. See, e.g., *Community Hospital v. Sullivan,* 986 F.2d 357, 360 (10th Cir. 1993) (refusing to apply collateral estoppel following change in facts and law). *Id.*, *Spradling*, at 1223.

In *Reed v. McKune*, 298 F.3d 946 (10th Cir. 2002) this Court also held:

> [E]ven when an issue has been actually litigated and there is a valid and final judgment of the issue, relitigation is *not* precluded when the issue is one of law and "a new determination is warranted to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws." *KPERS,* 941 P.2d at 1344; cf. [Citing *Spradling*].
>
> * * *
>
> A change in the relevant law was *indisputably effected* between the time of the disposition of Reed's state habeas claim and the pendency of

> his instant appeal of the federal district court's grant of summary judgment to defendants.. *Id., Reed,* at 951.

For issue preclusion to apply, the precise question at issue must have been raised and determined in the prior suit. Issue preclusion is not warranted given uncertainty as to whether the question was decided. See *Glass v. United States Rubber Co.,* 382 F.2d 378, 384 (10th Cir. 1967); *Carris v. John R. Thomas & Assocs.,* 896 P.2d 522, 528 (Okla. 1995). That is the case here.

In *Kansas Waste Water, Inc. V. Alliant Tech Systems, Inc.,* 2005 U.S. Dist. LEXIS 8798 (D.C. KS, May 9, 2005 Case # 02-2605-JWL), relying on the U.S. Supreme Court's and this Court's rulings - held:

> More importantly, though, even when two lawsuits concern *"essentially the same course of wrongful conduct,"* the first suit *does not* preclude "claims which did not even then exist and which could not possibly have been sued upon in the previous case." *Lawlor v. Nat'l Screen Serv. Corp.,* 349 U.S. 322, 327-28, 99 L. Ed. 1122, 75 S. Ct. 865 (1955); *see also Restatement § 24 cmt. f* ("Material operative facts occurring after the decision of an action with respect to the same subject matter may in themselves, or taken in conjunction with the antecedent facts, comprise a transaction which may be made the basis of a second action not precluded by the first."). Thus, res judicata does not apply where the modification of significant facts creates new legal conditions. [citing *Spradling, supra*]. *Id., Kansas Water,* at 79.

Most interesting here is the case of *The Oklahoma City Airport Trust v. Huggins,* 105 P.3d 344 (OK CIV APP 2004)

where the **same attorneys representing the URA here**, represented the C nd Airport Trust in that case, and **took an identical positio** the Tals assert in this instance case (i.e., **the prior judgment should be denied a conclusive effect to future actions if there has been a change in the law or judicial decision**). In that regard, the Oklahoma Court of Civil Appeal stated:

> Trust's arguments are convincing.[12][gggggggggggggg] A judgment should be denied a conclusive effect to future actions if there has been a change in the law. This applies to all types of changes in the law, including acts of the Legislature, judicial decisions and changes in regulations. Generally, res judicata is no defense where between the time of the first judgment and the second action there has been an intervening change in the law creating an altered situation. *State Farm Mutual Auto Insurance Co. v. Duel,* 324 U.S. 154, 65 S. Ct. 573, 89 L. Ed. 812 (1945), 89 L. Ed. 812; *Spradling v. City of* Tulsa,198 F.3d 1219 (10th Cir. 2000). (Emphasis added). *Id., Huggins,* at 346.

Clearly, the evidence supporting the Tals' allegations here shows that the condemned property was sold by the Hogan Team to MacDaddy Daddy enterprises on **11/8/04 - one year after** the 10/30/03 District Court rulings in this case, and **more than three years after the 7/31/01** Court of Appeals' rulings. Thus, the doctrines of *res judicata* or *collateral estoppel* are inapplicable here.

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gggggggggggggg [12] Note: Ms. Leslie Batchelor, attorney for Urban Renewal (Amici here) was the attorney of record representing the Oklahoma City Airport Trust in that case. Likewise, the City was also a party to the suit and represented by Mr. William Burkett, Municipal Counselor (same as here).

XI. THE COURT FAILED TO RULE ON TAL'S PRIVITY ISSUE

In his personal Appellant's Brief, Tal specifically sought this Court's review of the District Court's findings that all of his personal claims should be dismissed because Tal was purportedly in privity with the City and should have filed his personal claims in the City's prior *Qui Tam* related cases (applying *Res Judicata Doctrine*). The holding is erroneous in that at least two decisions of the Oklahoma Court of Civil Appeals held that **Tal was *not* in privity with the City** - see, *State, ex rel, Tal v. OKC Athletic Club,* Unpublished Okla.Civ.App. Opinion 6/1/05 (Attached as Exhibit **"A"** to Tals' 11/19/05 R.28)[j] letter filed with this court [11/21/05]); and, *Burkett v. Tal, et al*, 94 P.3d 114 (Okla. 2004); Certiorari to Oklahoma Supreme Court denied June 14, 2004 (Court ordered Opinion ... **"to be published and given precedential effect"**.) (the findings in that case were attached as Exhibits **"C"** and **"D"** to Tal's 11/19/05 R.28[j] letter to this Court.

In these two (2) cases, the ***City admitted it was not in privity with Tal*** and further sought (and obtained) a ruling that Tal lack standing to intervene or re-open the prior *Qui Tam* judgments because he was not a party and the judgments are not binding upon him.

Likewise, this Court improperly denied (on 1/3/05) Tal's Motion to accept and consider his Reply to Amicus Brief (filed on 7/6/04) which included attachments of public record (pleading/paper from related/latest *Qui Tam* suit) regarding the privity issue - specifically where the City's admitted and as well as contended, in documents filed in courts' proceedings - claiming it was not in privity with Tal and that the prior *Qui Tam* judgments, where Tal was not specifically named a party - are not binding upon him, and accordingly, Tal lacks standing to attempt to reopen the case or petition to vacate the judgments.

Not only there is evidence of contradiction between what the Defendants and Amicis stated in this case as compared to what they stated in other cases, it is apparent that they are using the privity/no-privity contention as best serves them. This further supports the Tals' conspiracy allegations against all parties (including Amicis) - i.e, using the legal system (legal remedy) for an unlawful purpose (to prevent the Tals from having their claims - ever - litigated on the merits), and to conceal the truth.

It is clear that the Defendants here switch their privity position as best serves them, to wit: (1) During the pendency of this case before the District Court, they claimed Tal was in privity with the City in the first *Qui Tam* related Declaratory Judgment suit (although Tal was not named a party), and further claimed that (2) because Tal was the leader of the taxpayers' group[13] in the 1998-2000 *Qui Tam* suits (although represented by licensed attorneys), the adverse court's rulings in said *Qui Tam* cases are binding upon him personally, and because he did not file his personal claims in the *Qui Tam suits*, his personal claims filed in this Case should be dismissed with prejudice. The District Court agreed with the Defendants' contentions and dismissed all of Tal's personal claims here.

However, after the commencement of this Appeal, in the two (2) Statecases cited above (*Qui Tam* related controversies), the City, supported by the majority of remaining Appellees/Amicis here, successfully blocked Tal's attempt to vacate *Qui Tam* related Declaratory Judgment (the Ballpark case), claiming Tal lack standing because he was not named a party and because the ***City was not in privity with Tal*** and said judgments are not binding on him. The trial court agreed with the Appellees' position and thereafter this finding was affirmed by the Oklahoma Court of Civil Appeal.

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[13] The Taxpayers group initial name was *Taxpayers Against Ripoff* ("TAR") - later changed the name to *Taxpayers for Honest Government* ("THG").

Because the District Court's ruling was in opposition to the Oklahoma Court of Appeals' rulings in the *Tal v. OKC Athletic Club, supra,* this Court's determination is required, especially since Tal extensively argued these issues in his personal Appellant Brief filed with this Court.

The determination of these omitted issues is crucial in light of the Court's findings that Tal may not represent his family's closely held corporate entities in this case, but on the other hand, the District Court dismissed Tal's personal claims on the grounds that he was the leader of the taxpayers' group - which interestingly, was represented by licensed attorneys. Determination by this Court is urged as to – which ruling should be governed - i.e., the District Court in this case, or the State Courts in the *Tal v. OKC Athletic Club* case?

Accordingly, Tal respectfully request this Honorable Court to review and rule on the privity issue.

12. CONCLUSION

For all reasons stated above, this Court should grant this Petition for Rehearing, reconsider it's 6/29/06 Opinion, and remand the case back to the Western District Court.

Dated: July 13, 2006.

Respectfully Submitted,

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[CERTIFICATE OF SERVICE AND EXHIBITS ATTACHED OR OMITTED]

In The United States District Court For the Western District of Oklahoma

(1)MOSHE TAL; (2) BRICKTOWN 2000, INC.; and (3) TAL TECHNOLOGIES, INC.,	))CIVIL ACTION) NO:
Plaintiffs,	))CIV.-02-324-F
-against-	)
(1) RANDOLPH DAN HOGAN; (2) TMK/HOGAN, a/k/a COMMERCIAL REAL ESTATE SERVICES JOINT VENTURE;(3) HOGAN PROPERTY MANAGEMENT, L.L.C.; (4) BRICKTOWN-TMK/HOGAN PARKING, L.L.C.; a/k/a BRICKTOWN-SMC/HOGAN PARKING; (5) BRICKTOWN TMK/ HOGAN ENTERTAINMENT, L.L.C.; a/k/a BRICKTOWN ENTERTAINMENT, L.L.C.; (6) MARK D. ELGIN; (7) STONEGATE MANAGEMENT CO., L.L.C. (8) ELGIN DEVELOPMENT COMPANY, L.L.C.; (9) TDC COMPANY, L.L.C.; (10) TIANA P. DOUGLAS,	)
Defendants.	)

FIRST AMENDED COMPLAINT

Plaintiffs, Moshe Tal, Bricktown 2000, Inc., and Tal Technologies Inc., for their Complaint against the Defendants, respectfully submit this First Amended Complaint, state and allege as follows:

I. SUMMARY OF THE CASE

Plaintiffs bring this case claiming that Defendants conspired with each other to tamper with and rig the public bid process to illegally obtain valuable redevelopment rights to South Bricktown.

Bricktown is one of the Oklahoma City Metropolitan Area Projects ("MAPS") that was created as part of a $300,000,000.00 government sponsored initiative, raised with a one-cent sales tax, and approved by the Oklahoma City voters in 1993. To that end, in 1997, a new Redevelopment Plan was devised for South Bricktown, where the City would attract private investors to build sports and entertainment-related facilities, including parking.

This action is brought under RICO because Defendants entered into an open-ended scheme to obtain redevelopment rights to South Bricktown. The scheme began in 1996, and continues through the present. The scheme was first perpetrated against others, and then was directed at Plaintiffs.

The enterprise that perpetrated this scheme consists of many players who acted in concert to assure that TMK/Hogan was unfairly and improperly awarded redevelopment rights to South Bricktown (hereinafter the development site may also be referred to as "Bricktown"). Some of the players are Defendants here, and others are non-parties to this lawsuit at this time.

The scheme also consisted of many distinct and separate wrongful acts, such as claiming that Torchmark Corporation ("Torchmark"), an $11 billion public company traded in the New York Stock Exchanged under the symbol "TMK", was a partner in TMK/Hogan when it was not. The financial reports of Torchmark were submitted to public officials as proof of the financial strength of TMK/Hogan and its ability to build a multi-screen cinema complex and develop the entire South Bricktown

area. TMK/Hogan was awarded redevelopment rights in part based on Torchmark's financial strength and ability, but the South Bricktown development has yet to be built because TMK/Hogan lacks the financial ability. This is further evidenced by the fact that TMK/Hogan is now asking the City of Oklahoma City to provide up to $18 Million to finance the construction of a Bass Pro Shop on the development area awarded to TMK/Hogan.

Separate wrongful acts include bid rigging, bribing a public official, failure to disclose business dealings with decision makers in response to direct questions, altering a public bid proposal after the deadline expired, tampering with official submissions made by Plaintiffs that were crucial to the award of redevelopment rights, claiming agreements with prospective tenants when none existed, selecting Plaintiffs as a co-redeveloper in Bricktown but refusing to permit Plaintiffs to participate, making false promises to charge low parking rates to visitors to Bricktown but failing to do so, misrepresenting results of official reports from a consultant hired by the city government to justify the improper selection of TMK/Hogan as redeveloper, and paying fees to the city's consultants who helped select the redeveloper. In addition, Defendants also used illegal and fraudulent means to cause the City to condemn Plaintiff's valuable canal-front property and transferring to Defendants (all Defendants except Douglas) for their own use and profits.

Because of the Defendants misrepresentations and other wrongful acts, especially that they could finance the development when in reality they were either unwilling or unable to invest their own money in South Bricktown, and their bribery of city officials, this valuable land in South Bricktown sits undeveloped as of the filing of this Complaint - more than three (3) years past the date TMK/Hogan said it would begin construction of a cinema complex on the property.

II. NATURE OF THE ACTION

1. Plaintiffs bring this action against the Defendants for engaging in unlawful activities, including racketeering activities, fraud, bribery, bid rigging, anti-competitive and unfair business practices, and for intentionally and maliciously interfering with Plaintiffs' prospective business advantage, and for conspiracy to do the same. The unfair, improper and illegal conduct of the Defendants, which was neither justified, privileged nor excusable, resulted in the loss of Plaintiffs' prospective business relationship with the City of Oklahoma City and in the Defendants gaining the rights to two contracts, one contract for parking development ("Parking Agreement"), and the second contract for the development of properties along the Oklahoma City MAPS Canal ("Development Agreement"), both on City-owned property in South Bricktown, Oklahoma City, State of Oklahoma.

2. The Plaintiffs allege that Defendants engaged in this type of conduct in another public bid for a contract not including Plaintiffs approximately one year prior to the Contracts which are the subject matter of this litigation. Accordingly, Plaintiffs allege that the Defendants' prior and continued fraudulent and improper conduct is additional evidence of a pattern of racketeering activities.

3. Plaintiffs also allege that even though the Parking and Development Agreements appear to be legal and valid as to their form, the means and manner in which they were acquired were fraudulent, illegal and improper.

4. Prior to the initiation of the improper and illegal activities by the Defendants, the Plaintiffs were negotiating with the City of Oklahoma City (the "City"), and had business opportunities in which they had a

reasonable expectation of profit. As an intended and foreseeable result of the Defendants' improper and illegal conduct, these contracts were awarded to Defendant, TMK/Hogan, causing Plaintiffs to suffer damages as a direct and foreseeable result of such actions by the Defendants.

III. JURISDICTION AND VENUE

5. This Court has jurisdiction of the claims herein pursuant to 18 U.S.C. § 1964(c); 15 U.S.C. § 1 *et seq* and 28 U.S.C. § 1331. This civil action arises under the laws of the United States. Jurisdiction is also predicated upon the doctrine of supplemental jurisdiction codified at 28 U.S.C. § 1367. Plaintiffs also allege violations of their rights under Title IX of the Organized Crime Control Act of 1970, as amended, 18 U.S.C. § 1961 *et seq.*; the Sherman Act, 15 U.S.C. § 1 *et seq*; 18 U.S.C. § 1341; 18 U.S.C. § 1343; 18 U.S.C. § 201; 31 U.S.C. § 3802; 15 O.S. § 136; 21 O.S. § 421; 21 O.S. § 38 *et seq*;15 O.S. 136; 79 O.S. § 1 *et seq*; and Common Law Tort, Conspiracy and Fraud.

6. Venue herein is proper under 18 U.S.C. § 1965(a), and 28 U.S.C. § 1391(b). Venue is also proper under 15 U.S.C. § 22. A substantial part of the events or omissions giving rise to Plaintiffs' claims occurred within this judicial district and the properties that are the subject of this action are situated within this judicial district.

IV. THE PARTIES

The Plaintiffs

7. Plaintiff, Moshe Tal ("Tal"), is a citizen of the United States, and is a resident of Cleveland County, the State of Oklahoma.

8. Plaintiff, Bricktown 2000, Inc. ("BT-2000"), is a corporation existing under and by virtue of the laws of the State of Oklahoma.

9. Plaintiff, Tal Technologies Inc. ("TTI"), is a corporation existing under and by virtue of the laws of the State of Oklahoma.

The Defendants

10. Defendant, Dan Randolph (a/k/a"Randy") Hogan ("Hogan"), is a citizen of the United States, and is a resident of Oklahoma County, the State of Oklahoma.

11. Defendant, TMK/Hogan Joint Venture ("TMK/Hogan"), is an Oklahoma entity which has been doing business in Oklahoma since January 1996. To the best of Plaintiffs' knowledge, on or about November 22, 2000, TMK/Hogan Joint Venture changed its name to "Commercial Real Estate Services Joint Venture". The TMK/Hogan entity may also been doing business as "Stonegate/Hogan" (d.b.a.). Therefore, hereinafter, any reference to TMK/Hogan shall include *Commercial Real Estate Services Joint Venture*, *Stonegate/Hogan* or any other name this joint venture entity may be using.

12. Defendant, Hogan Property Management, L.L.C. ("Hogan Property"), is a limited liability corporation existing under and by virtue of the laws of the State of Oklahoma.

13. Defendant, Bricktown-TMK/Hogan Parking, L.L.C. ("Hogan-Parking"), is a limited liability corporation existing under and by virtue of the laws of the State of Oklahoma. To the best of Plaintiffs' knowledge, on or about April 14, 2000, Bricktown-TMK/Hogan Parking, L.L.C. changed its name to Bricktown-SMC/Hogan

Parking, L.L.C. Hereinafter, reference made to "Hogan Parking" shall include this new name or any other name this entity may be using.

14. Defendant, Bricktown-TMK/Hogan Entertainment, L.L.C. ("Hogan Entertainment"), is a limited liability corporation existing under and by virtue of the laws of the State of Oklahoma. To the best of Plaintiffs' knowledge, on or about April 14, 2000, Bricktown-TMK/Hogan Entertainment, L.L.C. changed its name to Bricktown Entertainment, L.L.C. Hereinafter, reference made to "Hogan Entertainment" shall include this new name or any other name this entity may be using.

15. Defendant, Mark D. Elgin ("Elgin"), is a citizen of the United States, and is a resident of the State of Alabama.

16. Defendant, Stonegate Management Company, L.L.C. ("Stonegate"), is a limited liability corporation existing under and by virtue of the laws of the State of Alabama, and has been doing business in Oklahoma.

17. Defendant, Elgin Development Company, LLC ("Elgin Development"), is a limited liability company existing under and by virtue of the laws of the State of Alabama, and has been doing business in Oklahoma.

18. Defendant, TDC Company, LLC ("TDC"), is a limited liability company existing under and by virtue of the laws of the State of Alabama, and has been doing business in Oklahoma.

19. Defendant, Tiana P. Douglas ("Douglas"), is a citizen of the United States and a resident of Oklahoma County, State of Oklahoma.

V. THE ENTERPRISE PURSUANT TO 18 U.S.C. § 1961(4)

20. **The Enterprise** All of the Defendants acted together and in concert to conspire for the purpose of wrongfully obtaining the redevelopment rights to South Bricktown. For the purpose of the RICO claims here, TMK/Hogan is the "Enterprise" which engaged in and was used as the "front" entity for obtaining the illegal contracts. Each defendant aided and abated TMK/Hogan in its illegal activities.

21. **TMK/Hogan Joint Venture** Defendant, TMK/Hogan, is an Oklahoma Joint Venture which has been doing business in Oklahoma since January 1, 1996, and upon information and belief, said entity was not registered with the Oklahoma Secretary of State until February 16, 2000. The ownership of this joint venture is Fifty Percent (50%) by Defendant Hogan Property, and Fifty Percent (50%) by Defendant Stonegate, LLC.[gggggggggggggg] TMK/Hogan is the entity which was initially granted the rights to both the Parking and Development Agreements by the Oklahoma City Urban Redevelopment Authority ("Urban Renewal")[gggggggggggggg] making TMK/Hogan the developer of a portion of South Bricktown.

22. **Hogan Property** Defendant, Hogan Property is Fifty Percent (50%) partner in TMK/Hogan. Defendant Hogan is its manager. Defendant Hogan Property is one of the

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[gggggggggggggg]. As stated in ¶ 11 above, the TMK/Hogan joint venture entity is now called Commercial Real State Services, and may also been doing business as "Stonegate/Hogan". However, to some public officials and Bricktown related persons, the joint venture entity is still referred to as TMK/Hogan.

[gggggggggggggg]. Urban Renewal is a Trust of the City of Oklahoma City.

entities which executed both the Parking and Development Agreements.

23. **Hogan Parking** Defendant Hogan Parking was created on or about 12/17/97 by Defendants TMK/Hogan and Hogan specifically for the purpose of implementing the Parking Agreement which was initially designated by Urban Renewal to TMK/Hogan. Hogan Parking is one of the entities that executed the Parking Agreement.

24. **Hogan Entertainment** Defendant Hogan Entertainment was created on 3/9/98 by Defendants Hogan and TMK/Hogan specifically for the purpose of developing South Bricktown, which was initially designated to TMK/Hogan by Urban Renewal, which included building the TMK/Hogan Cinema Complex.[ggggggggggggg] Hogan Entertainment is one of the entities that executed the Development Agreement.

25. **Randy Hogan** Defendant Hogan is one of the managers of Defendant TMK/Hogan; manager and partner of Defendant Hogan Property; manager of Defendant Hogan Parking; and manger of Defendant Hogan Entertainment. Defendant Hogan executed both the Parking an Development Agreements and related Amendments. Defendant Hogan is the "front-man" and was the individual who made almost all formal presentations on behalf of all the entities who have an interest in the Parking and Development Agreements before the City Council, Urban Renewal, and the City's MAPS Citizens Oversight Board ("MAPS Board"), as well as most of the "public relations" presentations, including appearances before the Oklahoma City media.

[ggggggggggggg]. Hereinafter "Cinema Complex" shall mean the multi-screen theater and related development proposed by TMK/Hogan in response to Urban Renewal's Request for Proposal "RFP" on July 17, 1997.

26. **Stonegate** Defendant, Stonegate (an LLC), was created on or about 11/22/99. On or about 11/24/99, it merged with Stonegate Management Corporation. Upon such merger, Defendant Stonegate (the LLC) succeeded the partnership interest of Stonegate Management Corporation in TMK/Hogan Joint Venture.[gggggggggggggg] The sole initial member of Defendant Stonegate is Defendant, TDC. The manager of Stonegate is Defendant, Elgin. Stonegate was one of the entities which executed the Development Agreement and its Amendments.

27. **TDC** Defendant TDC was created on or about 11/22/99, and on or about 11/24/99, it merged with Torchmark Development Corporation (an Alabama corporation created on 6/10/88). Upon such merger, Defendant TDC became the surviving organization.[4] The sole initial member of Defendant TDC is the Defendant, Elgin Development. TDC's manager is Defendant Elgin.

28. **Elgin Development** Defendant Elgin Development was created on or about June 29, 1999. Its President and manager is Defendant, Elgin. Elgin is also the sole initial member of Elgin Development. Elgin Development is also the sole initial member of Defendant, TDC, and allegedly the financial "backer" of TMK/Hogan's Bricktown development.[4]

29. **Elgin** Defendant Elgin is one of the mangers of Defendant TMK/Hogan. As stated above, Elgin is the manager of Defendants TDC, Stonegate and Elgin

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[gggggggggggggg]. Under Alabama law, Ala. §10-12-56(b), when a merger is accomplished, all liability and debts of the business entities involved in the merger shall remain unimpaired - i.e. the organization that survived the merger assumes all liabilities of the original entity.

Development. He is also the owner of Elgin Development. Elgin was also the President and manager of Torchmark Development Corporation before it merged with TDC, and was also the President and manager of Stonegate Management Corporation before it merged with Defendant Stonegate Management LLC. Elgin executed the Development Agreement as well as the first and second amendments to the Development Agreement.

30. **Douglas** Defendant Douglas is the Executive Director of Urban Renewal. Douglas directly participated and was instrumental in the selection of TMK/Hogan as developer of Bricktown.

VI. DEFENDANTS' PURPORTED RELATIONSHIP WITH TORCHMARK CORPORATION.

31. **The Torchmark Corporation** Torchmark Corporation is an $11 billion public insurance company with its stock traded on the New York Stock Exchange under the symbol **"TMK"**.

32. **TMK/Hogan - a Property Management Entity for Torchmark's Real Estate Holdings** TMK/Hogan was initially formed, on or about January 1, 1996 (by Defendant Hogan, Elgin, Hogan Property and Stonegate) to be a leasing and property management entity, which among other things, would lease and/or manage properties owned by the Torchmark Corporation ("Torchmark") and its subsidiaries, including the properties owned by the Torchmark Development Corporation and the Globe Life and Accident Insurance Company (a wholly owned subsidiary of Torchmark).

33. **TMK/Hogan Claims to Be a Joint Venture Between Hogan and Torchmark Development Corporation** On or about 7/25/96, Defendant TMK/Hogan submitted its

first redevelopment proposal to Urban Renewal in response to Urban Renewal's first RFP for redevelopment of approximately 26 acres that Urban Renewal owned in the southeast portion of South Bricktown (the "East 26 Acres"). In the bid, the Initial TMK/Hogan Team[gggggggggggggg] claimed that TMK/Hogan is a Fifty-Fifty (50/50%) joint venture between Hogan Property, and Torchmark Development Corporation (not Stonegate as it now claims).

34. **Torchmark Development Corporation Is Not The Partner** Contrary to its bid proposal, TMK/Hogan's *Partnership Fictitious Name Certificate of TMK/Hogan Joint Venture* filed with the Oklahoma Secretary of State claims that the TMK/Hogan is a joint venture between Defendant Hogan Property and Defendant **Stonegate**.

35. **Elgin's Position in Torchmark Development Corporation** Torchmark Development Corporation was a smaller subsidiary of Torchmark Corporation. Defendant Mark Elgin was Executive Vice President and Director of Development for Torchmark Development Corporation. Based on information and belief, Defendant Elgin continued his employment –with Torchmark Development Corporation until he and/or Defendant Elgin Development purchased the Torchmark

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[gggggggggggggg] The *"**Initial** TMK/Hogan Team"* shall mean the initial 1996 members TMK/Hogan Joint Venture which includes Defendants TMK/Hogan, Hogan, Hogan Property, Elgin, Stonegate and TDC. Likewise, the *"TMK/Hogan **Parking** Team"* shall mean the Defendants TMK/Hogan, Hogan, Hogan Property, Hogan Parking, Elgin, Stonegate and TDC; the *"TMK/Hogan **Development** Team"* shall mean the Defendants TMK/Hogan, Hogan, Hogan Property, Hogan Entertainment, Elgin, Stonegate and TDC; and the *"TMK/Hogan Team"* shall mean ALL defendants excluding Defendant Douglas.

Development Company and other real estate holdings from Torchmark. After the purchase of Torchmark Development Corporation, Defendant Elgin was the President of Torchmark Development which merged into TDC (the LLC).

36. **Conspiracy to Mislead and Defraud** From or before 7/25/96 through about 3/19/97, the Defendants, the Initial TMK/Hogan Team, conspired with each other to obtain the development rights to Urban Renewal's East 26 Acres by fraudulent and deceptive means.

VII. DEFENDANTS TORTIOUS INTERFERENCE WITH CONTRACTS OF OTHERS (PREVIOUS RACKETEERING ACTIVITIES)

37. **The 1996 Request for Proposals ("RFP")** In or around the early part of 1996, Urban Renewal published an RFP to develop the "East 26 Acres" it owned in South Bricktown. The deadline to submit proposals was 7/25/96.

38. **Proposals Submitted** In response to its 1996 RFP, Urban Renewal received two (2) proposals. One from the Initial TMK/Hogan Team, and the second from Sooner Investment Group ("Sooner"). The Initial TMK/Hogan Team proposed the development of a Cinema Complex, and Sooner proposed multi entertainment uses including motels, restaurants and recreational facilities.

39. **Torchmark Corporation Is Not a Partner of TMK/Hogan According to SEC Filings** Torchmark Corporation is a public company which is required by law to file an annual report, as well as more frequent periodic reports with the SEC, and report any material interest the Torchmark Corporation, or its subsidiaries, has in other entities, including joint ventures. There is

no mention of the alleged TMK/Hogan Joint Venture in any of Torchmark's SEC filings.

40. **Financial Ability/Qualifications and Development Experience Required** As required by the public RFP, each developer had to submit information to show its financial ability, financial qualifications, and redevelopment experience.

41. **TMK/Hogan Initial Team Submits Torchmark's $9.3 Billion Balance Sheet In Support of Their Financial Ability** In response to the 7/25/96 RFP, and in support of their financial ability, the TMK/Hogan Initial Team submitted the 1995 10-K Annual Report of Torchmark Corporation, which at that time, showed a Balance Sheet of $9.3 billion.

42. **TMK/Hogan Misrepresents That It is Backed by Torchmark Corporation** In response to the first RFP, the TMK/Hogan Joint Venture represented to Urban Renewal that it had the financial support and/or "backing" of the Torchmark Corporation for TMK/Hogan's proposed Cinema Complex development.

43. **No Financial Information Submitted for Any Hogan Entity or Torchmark Development Corporation** On 7/25/96, the Initial TMK/Hogan Team submitted the 1995 Annual Report including the Financial Statement of Torchmark (the $ 9.3 billion public company). No financial statement of Hogan Property, nor any financial statement of TMK/Hogan Joint Venture was submitted.

44. **TMK/Hogan Selected** On or about 3/19/97, based on the Initial TMK/Hogan Team misstatements, Urban Renewal selected the Initial TMK/Hogan Team as the developer for the East 26 Acres.

VIII. DEFENDANTS' INTERFERENCE WITH PLAINTIFFS' CONTRACTUAL AND BUSINESS ADVANTAGE.

45. **Plaintiff's Relationship With the City** From approximately January, 1995, through approximately 6/24/97, Plaintiffs negotiated with the City of Oklahoma City to develop shopping mall, entertainment, office, residential and parking facilities in the South Bricktown area of Oklahoma City. TMK/Hogan had already been awarded an area known as the "East 26 Acres", while the Plaintiffs were negotiating over an area known as the "West 25 Acres" (which includes approximately 1.4 acres owned by TTI and leased to BT-2000). The West 25 Acres were controlled by the Oklahoma City Riverfront Redevelopment Authority (a City's Trust), while the East 26 Acres were controlled by Urban Renewal.

46. **Plaintiffs Attracted Investors & National Developer** Based on this prospective business-relationship with the City, Plaintiffs attracted numerous investors, as well as, a national developer, The Cordish Company, to partner with Plaintiff, BT-2000 to invest, develop and implement the specific developmental designs in the South Bricktown area.[gggggggggggggg]

47. **MAPS Canal Navigability** The City's MAPS' Master-Plan[gggggggggggggg] was to have a portion of the canal built

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[gggggggggggggg]. Hereinafter, the informal association between The Cordish Company and Plaintiffs BrickTown 2000 will be referred to as "CCBT".

[gggggggggggggg]. On or about December 14, 1993, the citizens of Oklahoma City voted in favor of approving the MAPS projects which plan was to expend approximately $300 million in public projects, including the construction of a man-made canal which would flow through the entire South

in the West 25 Acres be navigable, while the portion of the canal built on the East 26 Acres would not be navigable as a result of a seven (7) foot drop in elevation. The navigability of the canal made the West 25 Acres more desirable for development.

48. **Defendants Seek To Have TMK/Hogan Replace Plaintiffs** During the latter part of 1996 and early part of 1997, Defendant Hogan, in his personal capacity and as manager and representative of the remaining members of the TMK/Hogan Development Team, and with the aid of Defendant Douglas, approached City Officials and the Riverfront Redevelopment Authority and offered to exchange the East 26 Acres that TMK/Hogan was awarded by Urban Renewal, for the City owned West 25 Acres so that TMK/Hogan would be able to develop the more desirable land along the navigable canal without going through a public RFP (the "Land Swap"). The City Council and the Trustees rejected Douglas' and Hogan's "Land Swap" proposal.

49. **Defendants' New Scheme** During the latter part of April and early May, 1997, after the City Council and Riverfront Authority rejected Douglas/Hogan's "Land Swap" proposal, the Defendants, the TMK/Hogan Development Team, with the aid of Defendant Douglas, developed a new scheme whereby the City would transfer the West 25 Acres to Douglas' Urban Renewal; Urban Renewal would cancel TMK/Hogan's previous award of the East 26 Acres; consolidate the West and East parcels (totaling approximately 51 acres); publish a new RFP; but ultimately select the TMK/Hogan Team as Urban Renewal's choice for developer.

Bricktown area, and a construction of a minimum of 1200 space parking lots on the City's owned West 25 Acres. The MAPS projects to be financed by the imposition of a limited-purpose, five year 1% sales-tax.

50. **Plaintiffs Reveals Partnership With The Cordish Company For $200 Million Development In Bricktown** On May 20, 1997, Mr. David Cordish, President of The Cordish Company, sent a letter to then Mayor Ronald Norick ("Norick"), announcing Cordish's partnership with BT-2000 in developing the Bricktown project. The following day, May 21, 1997, the Plaintiffs held a press conference and revealed their partnership with The Cordish Company and its commitment to invest approximately $200 million to implement the CCBT Development Plan. The news of the partnership and plans were published in all Oklahoma City media, including all TV stations, radios, and printed media.

51. **Mayor Norick Asks Cordish For Written Commitment To Build Parking Lots In Bricktown** On May 28, 1997, a three-way conference call took place between then Mayor Norick, Mr. David Cordish and Plaintiff Tal. Mayor Norick expressed his concern for the immediate need for at least 1200 parking spaces in Bricktown. Mr. Cordish told Norick that CCBT would be willing to provide the needed parking, at no cost to the City, based on a temporary agreement. Norick asked Cordish if he would be willing to put said commitment in writing. Cordish agreed and the same day issued a written commitment.

52. **Urban Renewal Shifts To High Gear - Preparing New Plan** Defendant Douglas, the TMK/Hogan Team with the aide of other unnamed coconspirators, shifted to "high gear" and developed a new redevelopment plan designed to eliminate any agreements between the City and Plaintiffs. Pursuant to the terms of this new plan, Douglas and Urban Renewal would have the control over who would build the needed 1200 parking spaces, as well as, control over the development of the City's West 25 Acres.

53. **Urban Renewal Persuades the City to Give it Control of the West 25 Acres and to Select the Developer for Bricktown**. On June 24, 1997, the City Council approved the Urban Renewal's new plan whereby Urban Renewal would act as its agent in controlling the West 25 Acres, and permitted Urban Renewal to select the developer of the Property. The City Council, however, retained final approval over the developer's selection.

54. **Request for Proposals ("RFP") Published By Urban Renewal** On 6/26/97, Urban Renewal published an RFP for the redevelopment of the entire 51 acres in South Bricktown (the West 25 and East 26 Acres). The deadline for submitting the proposals was 7/17/97 at 11:00 a.m.

55. **RFP Required Proposals To Be Consistent With RTKL's Development Plan Recommendations** The 6/26/97 RFP required that proposals be consistent with the recommendations contained in the *Downtown Oklahoma City Action Plan* prepared by RTKL Associates ("RTKL") and Keyser Marston Associates dated 3/24/97 (the "RTKL Development Plan" a.k.a *"Downtown Oklahoma City Action Plan"*). This report recommended relocating the 1996 TMK/Hogan proposed Cinema Complex from the East 26 Acres to the West 25 Acres.

56. **TMK/Hogan and Associates Helped Finance RTKL's Development Plan Which Recommended That the TMK/Hogan Development Team's Cinema Complex Be Relocated To The West 25 Acres** The RTKL Development Plan, which was favorable to TMK/Hogan, was funded in part by TMK/Hogan and some of its associates.

57. **The RTKL Development Plan Was Financed, In Part, With Federal Grant Money** The $110,000 *RTKL Development Plan* was financed with $50,000 obtained through Defendant Douglas, in her official capacity as Executive Director of Urban Renewal, from Federal Community Development Block Grant.

58. **The RTKL Development Plan Was A Sham** Defendant Douglas conspired with the remaining Defendants in developing a scheme whereby Urban Renewal would hire RTKL to "develop" the RTKL Development Plan and to recommend the "land swap" concept. This was done AFTER Douglas' and Hogan's "land swap" requests were rejected by City Council and the Riverfront Redevelopment Authority. The new *RTKL Development Plan*, and specifically, the recommendation to relocate the TMK/Hogan theater to the West 25 Acres was done at the request of Douglas and TMK/Hogan who financed the majority of the cost of the "study". This report is a farce and a sham. It was improperly used as a tool to convince the City Council and the Riverfront Redevelopment Authority that relocating the TMK/Hogan proposed cinema to the West 25 Acres would be in the best interest of the City.

59. **Placing Restrictions In RFP That Only One Bidder Can Meet Is Illegal** The published RFP included restrictions that only TMK/Hogan could meet. Specifically, the RFP required that any proposal must meet the guidelines of the RTKL Plan. A close look into the RTKL Plan reveals the recommendation to trade the City's land in Bricktown for the TMK/Hogan multi-screen theater. Placing a restriction in a public bid document that only one bidder can meet, is illegal.

60. **The Selection Judges** The selection judges would review the proposals and make recommendations to the Urban Renewal Commissioners who would ultimately

select the redeveloper for Bricktown. Defendant Douglas was one of the selection judges. The other three judges were John Gosling of RTKL (Urban Renewal's international Consultant hired with TMK/Hogan money), Garner Stoll (Oklahoma City Planning Director), and Dick Coyle (Oklahoma City Planing Commissioner).

61. **The RFP Bids Are Submitted** On 7/17/97, the RFP Proposals were submitted. Urban Renewal received three proposals from TMK/Hogan, CCBT, and Sooner Investments.

1. The Sooner proposal consisted of five pages. It was not specific but suggested a variety of options (dependant on market demand) including restaurants, shops, possibly a motel in the future, and a 1200 space surface parking lot. No Specific investment amount was declared.

2. The TMK/Hogan proposal consisted of three pages and a three page unsigned proposed parking agreement between TMK/Hogan, the Bricktown Association, and the OKC Athletic Club (owners of the local 89ers baseball team -- now known as the RedHawks). The proposal offered a 26 screen theater, an IMAX theater, up to 120,000 square feet of restaurants and shops (book, music shops, etc.), and a paved 1200 space surface parking lot. The estimated investment and projected cost was about $30 Million.

3. CCBT's submitted an approximately 200 page proposal consisting of a long term master development plan for the area, a description of CCBT's experience and capabilities to develop the area, and architectural renderings of the

proposed development. It was much more specific than the other proposals and featured a Master-Plan of multi-use projects, including a shopping mall (about 400,000 square feet), 8-10 screen theater and/or an IMAX type theater, a high-rise convention type hotel (400 rooms), national-team restaurants/entertainment facilities, museums, an amphitheater, an approximately 4000 space parking structure and lots, raising the canal elevation on the East 26 Acres to that of the main canal making the entire canal navigable, a small lake, an artist village, office buildings, design for better linkage of the canal with the Canadian river/lake, landscaping, lighting, and other related facilities and services. CCBT estimated investment and projected development cost was about $160-200 Million.

62. **Defendants Knew Developer's Financing & Experience Were Crucial For Selection** Defendants (TMK/Hogan, Hogan, Elgin, Hogan Property, Stonegate, Douglas and TDC) knew that as part of the selection process and the City Council's final approval, each developer's experience and financial ability to implement each proposed development project were crucial factors in selecting and granting the development rights.

63. **Cordish's Urban Development Experience** Cordish is a national developer with about thirty (30) projects nation-wide and has won awards for his specialty in Urban Development.

64. **Cordish's Financial Ability** Cordish has more than $1.5 Billion in assets, and has made every project it has profitable. CCBT's 7/17/97 proposal also contained letters from Bank One and Nations Bank who expressed their willingness to assist the CCBT team in providing

financing for their proposed $160-200 million development project.

65. **TMK/Hogan Development Team Repeats False Information About Financial Backing by Torchmark** In their three (3) page 7/17/97 proposal, the TMK/Hogan Development Team again falsely claimed that it was backed by **Torchmark** ... *"which has a $10 billion dollar balance sheet and ranks in the Fortune 100 in size."*

66. **Hogan Tells Selection Judges That Torchmark Is A Partner In TMK/Hogan and Would Finance Entire Project If Needed** During the 7/21/97 oral presentation before Urban Renewal's selection committee/judges, Defendant Hogan falsely told the judges that TMK/Hogan was a joint venture between his company (Hogan Property) and Torchmark - a $10 billion public company, and that TMK/Hogan has *"the financial ability to build every square inch of it [The Cinema Complex] and lease it back."*

67. **Hogan Claims a Deal with National Theater Company and Promises to Begin Construction of Cinema Complex in April-May, 1998** During the oral presentation, Defendant, Hogan, falsely told Urban Renewal's selection judges that TMK/Hogan Development Team had a deal with a major national theater company and that they were ready to begin construction of the Cinema Complex by April-May, 1998. Construction never began on the promised date, and no contract to build the Cinema Complex has been executed as of the date of filing this Complaint.

68. **Hogan's Promise To Charge Only $2 Per Day For Parking** The price of parking was a major issue with the Oklahoma City Council so that people could afford to go to Bricktown. Between 7/17/97 and 7/29/97, in

interviews with local TV and radio stations, and during the oral presentation made by Defendant Hogan, Hogan falsely stated that the TMK/Hogan Parking Team would **"charge no more than $2 per day, or 50 cents an hour"** for parking. When awarded the parking contract the TMK/Hogan Parking Group never charged as little as $ 2 per day or 50 cents per hour for parking in Bricktown.

69. **Hogan Touts TMK/Hogan's Financial Strength** TMK/Hogan's financial ability and the alleged backing, commitment and financial strength of the Torchmark Corporation were emphasized in articles published in the *Journal Record* and in *The Daily Oklahoman*: *" **The joint venture between Hogan Property and Torchmark** Realty in Birmingham, Ala., **flexed the muscle of Torchmark's pocketbook**"* ... and *"**Hogan, teamed up with Torchmark, a Fortune 500 Company, said the company has cash to finance the entire project if necessary.**"*

70. **Before Even Reviewing CCBT's Proposal Douglas Talks CCBT Down To the Media**-Following the CCBT Team's 7/21/97 oral presentation, and before even reviewing CCBT's proposal, Defendant Douglas told the media that CCBT's plan was *"too good to be true"* and stated that *"we don't want to buy blue sky."*

71. **Douglas' Summary of the Gosling Report Submitted to Urban Renewal's Board of Commissioners Was False and Misleading** Goslings' company, RTKL, was the consultant who prepared a report making recommendations about which candidate to select as redeveloper of South Bricktown. On 7/25/97, Douglas prepared a "summary" of the Gosling/RTKL report to give to Urban Renewal's Board of Commissioners to be used when the Commissioners vote on awarding development rights to Bricktown. The summary claims

to concur with Gosling's findings, and recommends that TMK/Hogan be selected as the primary developer on Phase I and a co-developer on Phase II. This is not what the report recommended. Instead the Report recommended that Urban Renewal evaluate CCBT as the long term developer of the property, and only have TMK/Hogan build the theater as an initial development initiative.

72. **Douglas' False and Misleading Summary Results in TMK/Hogan's Selection as Exclusive Developer on Phase I and Co-developer on Phase II of the Project** At the 7/28/97 meeting, Urban Renewal's Board of Commissioners' selections to develop both entertainment and parking for Bricktown were announced. Based on Douglas' false and misleading summary, the Board selected TMK/Hogan as the exclusive developer of the West 25 Acres (Phase I) for both the parking and the Cinema Complex. TMK/Hogan was given a maximum period of 30 days to reach an agreement for the parking development, and 120 days to reach an agreement for the Cinema Complex. Furthermore TMK/Hogan and CCBT were designated as the co-developers for the Phase II of the project (the East 26 Acres). CCBT and TMK/Hogan were given 180 days to reach a Redevelopment Agreement for Phase II of the project.

73. **Media Announces the $10 Billion Torchmark Was Selected To Build Cinema Complex** Following Urban Renewal's 7/28/97 selection announcement, all media (TV, Radio and Newspapers) stated that Hogan's partnership was with a $10 billion Fortune 100 company was selected to develop Bricktown. An article published in the Daily Oklahoman stated ***"A $10 billion Fortune 500 company was chosen Monday to build 1,200 parking spaces, a 20-screen theater, shop and restaurants on city-owned land south of Bricktown"***.

74. **City Council Orders Douglas to Appear & Provide Copies of TMK/Hogan Proposal** During the 7/29/97 Council meeting, the City Council expressed its concerns about Urban Renewal selecting TMK/Hogan to develop Bricktown. The Council asked Douglas to appear before the Council at the following Tuesday's Council meeting to explain Urban Renewal's selection of TMK/Hogan. The Council further requested copies of TMK/Hogan's proposal given to Urban Renewal in response to the RFP.

75. **Douglas and TMK/Hogan Fabricate Proposal** Douglas and the Defendants fabricated a new TMK/Hogan proposal to submit to the City Council in violation of public bids law. Instead of submitting the six (6) page RFP proposal of TMK/Hogan as the Council requested, Hogan and Douglas submitted a new, one inch thick, fabricated proposal which copied the CCBT's proposal design and size and submitted it to the Council as if it was TMK/Hogan's original RFP proposal.

76. **Material Changes in the Fabricated Proposal** There were several material changes to the fabricated proposal which were designed by Defendants to defeat the CCBT proposal and mislead the City Council including:

1. **Torchmark Corporation's Annual Report:** This fabricated proposal included Torchmark Corporation's 1996 Annual Report and financial statement as of 12/31/96, and several color brochures of Torchmark Development Corporation's development projects in Alabama.

2. **New Parking Agreement–Wire Fraud:** The TMK/Hogan 7/17/97 *"Agreement with Respect to Parking Facility"* was removed and

substituted in its place with a new three (3) page MEMO titled *"Proposed Parking Agreement Structure."* The fax header on the Memo Agreement shows that it was executed **4 days after** the 7/17/97 RFP deadline. Because the telephone lines were used to transmit this fabricated proposal, this is wire fraud.

3. **Fabricated Proposal Copied CCBT Proposal** The fabricated proposal mirrored CCBT's proposal in that it included similar sections including *"Executive Summary"* and *"The Team Players"* sections. The fabricated proposal also contained color illustrations and architectural renderings similar to those contained in CCBT's Proposal. Unlike CCBT's proposal, TMK/Hogan's fabricated proposal was mostly irrelevant "filler" that had nothing to do with being awarded the project, such as copies from a brochure from the OKC Chamber of Commerce, and the OKC Official Visitor's Guide Magazine including advertisements. This made the fabricated proposal appear as thick as the CCBT proposal.

77. **Misrepresentations in the Fabricated Proposal** Additional misrepresentations made by Defendants in the fabricated RFP proposal were that:

a. that there was a formal joint-venture between any of the Hogan entities and Torchmark Corporation;

b. that Torchmark Corporation had made financial commitments to invest in the TMK/Hogan's Bricktown Cinema Complex proposal; and

c. Torchmark Corporation consented to submit its 1996 Annual Report and Financial Statement as a substitute for the financial statements of the

alleged Hogan and Torchmark Corporation joint-venture.

78. **Defendants Represent the Fabricated Proposal as TMK/Hogan's Original RFP Proposal** On Friday, 8/1/97, the Fabricated RFP Proposal was delivered to the Mayor, City Manager and all City Council members as if it were TMK/Hogan's original RFP.

79. **Commissioner Confirms Torchmark's Financial "Muscle" - Major Factor In Selecting TMK/Hogan** During the 8/5/97 Council meeting, an Urban Renewal Commissioner told the City Council that the developers' financial ability was a major factor in the selection process and emphasized that TMK/Hogan's "partner" - Torchmark had the capacity to *"bring in a lot of outside money"* to the project.

80. **Bricktown Association Clears Up Additional Confusion Caused by TMK/Hogan in RFP** In its RFP, TMK/Hogan falsely made it appear as if the Bricktown Owners Association was a partner with TMK/Hogan in developing parking in Bricktown. The appearance that the other Bricktown Owners supported TMK/Hogan as developer in Bricktown gave TMK/Hogan an additional edge in being awarded development rights to Bricktown.

81. **Douglas Receives Cordish's Confidential Financial Report** On 8/19/97, CCBT hand delivered Cordish's confidential financial report to Douglas. Douglas did not put this information into the RFP documents so that it could be considered in selecting CCBT as developer.

82. **CCBT & Tal Designed Canal On East 26 Acres To Be Navigable - More Attractive For Development** On February 10, 1998, after spending substantial amount of time and money, CCBT and Tal presented to Mayor

Norick, Council, and Urban Renewal, a new plan and architectural design whereby the previously planned non-navigable canal (7 feet lower than the navigable Bricktown canal) could be raised and built at the same level as the Bricktown canal. This plan made the canal flowing through the East 26 Acres navigable and more attractive for development.

83. **Mayor Norick Present Raising Canal Elevation Idea To Council** On February 17, 1998, Mayor Norick presented the idea of elevating the canal level on the East 26 Acres to City Council, and recommended City Staff and MAPS Board consider the changes.

84. From February 17, 1998, through mid-May, 1998, City Staff, MAPS Coordinators and engineers, and MAPS Board reviewed the concept of raising the canal elevation on the East 26 Acres, and approved it. Thus, making the East 26 Acres more attractive for development.

85. **Douglas Did Not Negotiate With CCBT** Despite CCBT's continued attempt to meet and conduct negotiation for the Phase II development contract, Douglas never met with or held any negotiations at all with CCBT from the time that CCBT was selected as the co-developer with TMK/Hogan, until CCBT was "deselected" as co-developer in Bricktown.

86. **Urban Renewal Sends Plaintiffs One-Day Notice Cancelling CCBT's East 26 Acres Development Designation** On 5/20/98, Douglas faxed CCBT a notice advising it that Urban Renewal was holding a board meeting the following day where it intended to cancel CCBT's co-developer designation and grant exclusive development rights to both Phase I and II to TMK/Hogan.

87. **CCBT Is "De-Selected" & Entire 51 Acres Is Granted To TMK/Hogan** On 5/21/98, Urban Renewal adopted resolutions granting the TMK/Hogan Development Team the development rights for the entire 51 acres and "de-selected" CCBT.

88. **Urban Renewal 5/21/98 Meeting Illegal - Did Not Meet Statutory Notice Requirements** The giving of less than 24 hours notice of the 5/22/98 Urban Renewal Commissioners meeting made the meeting illegal as it did not meet the statutory requirements to provide at least ten (10) days notice of official public meeting. Thus, the outcome of this illegal meeting, including any resolutions adopted, are voided as a matter of law.

89. **With CCBT out of the Picture, The Defendants Attempt to Get Bricktown Land for Free** Just five days after de-selecting CCBT, on 5/26/98, Defendant Douglas proposes to give the entire 51 Acres to TMK/Hogan for free ($4 million plus in land value in exchange for TMK/Hogan making $3-4 million in public improvements to its own development). By comparison, CCBT agreed to pay for the land and improvements, and never asked to get this prime Bricktown property for free. The City Council still had to approve the de-selection.-

90. **Giving TMK/Hogan Additional Government "Perks" Also Used As Excuse to De-Select CCBT** Defendants also requested that they receive a section 108, forgivable Federal government loan for the property. Defendants claimed that TMK/Hogan needed to own the entire Bricktown property to collateralize government section 108 loans, and this justified the de-selection of CCBT. CCBT requested none of the public assistance and government "perks" which TMK/Hogan requested, yet

CCBT was denied the right to develop the land so that TMK/Hogan could receive the government "perks."

91. **TMK/Hogan's Again Claims a Partnership with Torchmark** During the 5/28/98 MAPS Board meeting, Urban Renewal told the MAPS Board that the TMK/Hogan joint venture was a Fifty-Fifty (50/50) partnership between the Hogan local entities and Torchmark - i.e., the $10 billion Fortune 100 insurance company. Urban Renewal stated that it could provide the MAPS Board with the financial statement of the company. The MAPS Board asked Urban Renewal to provide the financial statement of both partners in TMK/Hogan. As before, the only financial statements ever produced were the Torchmark Corporation's 1995 and 1996 SEC 10-K Annual Reports.

92. **TMK/Hogan Adjusts Deal for Political Reasons** On 6/8/98, the Defendants, TMK/Hogan Team proposed a *new* scheme to garner government "perks". Instead of getting the land for free, TMK/Hogan offered to pay the City the sum of approximately $3.3 million for 31.45 acres (or $2.5 million for the City's owned West 25 Acres [ggggggggggggg]). In exchange, the City would pay for approximately $3 million in improvements to the Defendants Bricktown property. By comparison, CCBT offered to reimburse the City's entire cost for the land, and to pay an additional $8-11 million in improvements to the canal and Bricktown, without any City money.

93. **Defendants Submits To Council a Newer (1997) Torchmark SEC 10-K Annual Report** As an attachment to his 6/8/98 letter to City Council, Defendant Hogan enclosed several color renderings of

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[ggggggggggggg] To the present time, the City spent more than $3.5 million of MAPS dollars on the West 25 Acres, not including certain condemnation still in pending litigation.

the proposed Cinema Complex (including an IMAX Theater), and a copy of Torchmark's 1997 SEC 10-K Annual Report and financial statement.

94. **Councilman Liebmann Suggests Inviting Cordish & Compare City's Participation** During the 6/9/98 City Council meeting, Councilman Guy Liebmann ("Liebmann") suggested inviting Mr. Cordish to meet the City Council and to compare the CCBT's proposal versus TMK/Hogan's proposal which now asked the City to invest millions of dollars in public improvements, as opposed to the CCBT Team's offer to invest $8-11 million in public improvements (in addition to the $160-200 million development cost and payments to the City and Urban Renewal for the land's value).

95. **Liebmann Invites Cordish To Meet Council** On 6/10/98, Councilman Guy Liebmann sent a formal letter to Mr. Cordish, inviting Cordish to come to Oklahoma City. Cordish accepted the invitation and arranged to arrive in Oklahoma City on 6/29/98 to meet with several City Officials.

96. **Defendant Repeats Claim That Torchmark Is Partner In TMK/Hogan** On 6/25/98, Defendant Hogan appeared before the MAPS Oversight Board. Prior to that meeting, Defendant Hogan and Defendant Douglas provided the MAPS Oversight Board members with the Financial Statement and 1997 Annual Report of Torchmark (the $11 billion public company). During the 6/25/98 MAPS Board meeting, Defendant Hogan told the Board that "TMK" (in the TMK/Hogan name) is the public stock symbol of the $11 billion Torchmark Corporation. When the Board tried to get Hogan to define the difference between the Torchmark Corporation and the Torchmark Development Corporation, Defendant Hogan's responded by saying: ... ***"at the end of the day it's all the same -***

Torchmark" i.e., the $11 billion public company. The Board asked Defendant Hogan: ...***"who would you say is your 50/50 partner?"*** and Defendant Hogan replied: ***"Torchmark"***. Defendant Hogan knew, at that time of making such representation, that it was false as the Torchmark Corporation was not his 50% partner in TMK/Hogan.

97. **Douglas Cancels Meeting With Cordish One Day Before His Arrival In OKC** Douglas also requested a meeting with Cordish during his 6/30/98 visit to Oklahoma City, but Douglas canceled the meeting before it took place and refused to meet with Cordish.

98. **City Manager Comparison Report Contains Incorrect Information Provided By Douglas** On 6/29/98, the City Manager (Glenn Deck) issued a report to the Mayor and Council comparing the CCBT Proposal versus the TMK/Hogan Proposal. The Report contains incorrect statements relating to Cordish's financing based on the missing financial information provided to Defendant Douglas. (See ¶ 81).

99. **Hogan Again Tells the City Council and MAPS Board That IMAX Is Included In Cinema Complex** During the 6/25/98 MAPS Board meeting as well as during the 6/30/98 Council meeting, Defendant Hogan stated that the IMAX is part of TMK/Hogan's planned Cinema Complex.

100. **Alternative City Counsel Proposal To Give Most of Property To CCBT** From 5/23/98 through 6/30/98, the majority of the Council (5 out of 9) were against granting the development rights on the entire 51 acres to TMK/Hogan. Instead, a majority of the City Council was in favor of a compromise proposal whereby CCBT would be selected to develop the majority of the property, and the TMK/Hogan Development Team

would be given the right to develop approximately ten to eleven (10-11) acres of the South Bricktown property for its proposed Cinema Complex.

101. **City Manager Meets With Cordish - Douglas' Failure to Submit Cordish's Financial Statement Discovered** On 6/30/98, the City Manager met with Tal and David Cordish. He gave Tal and Cordish a copy of his 6/29/98 comparison report. The City Manager stated that the "weakest" point of the CCBT proposal was that Cordish did not submit a statement to Urban Renewal reflecting Cordish's financial ability. Cordish had previously delivered the information to Douglas on 8/19/97. This critical information to being awarded the project "disappeared," and was never considered in awarding the project.

102. **Hogan Announces Cinema Complex Construction To Begin In Late 1998** An Article published in *The Daily Oklahoman*, quoted Defendant Hogan as stating that the TMK/Hogan Development Team would begin construction of the Cinema Complex by late 1998. Construction did not begin as promised, and has still not begun construction as of the filing of this Complaint.

103. **Liebmann Asks Tal For Bribe - Tal Rejects** Plaintiff Tal met with Councilman Guy Liebmann (the week prior to the 6/30/98 City Council meeting) to discuss the upcoming City Council meeting related to the Bricktown development. Liebmann advised Tal that if CCBT "helped" Liebmann in "retiring" his Mayoral campaign debts, Liebmann would vote in favor of the CCBT's proposal. Tal and CCBT declined to give Liebmann an illegal bribe.

104. **Liebmann Bribe** After CCBT refused to pay an illegal bribe to Liebmann to buy his vote, Defendants bribed Liebmann. Defendants held a "fundraiser" for

Councilman Liebmann which allegedly went to retire his campaign debt for his failed bid for Oklahoma City Mayor. The debt to be retired was for money loaned directly from Liebmann to his campaign so the "fund-raising" money went directly into Liebmann's pocket.

105. **Defendants "Raise" $13,500 to Pay Liebmann's Campaign "Debts" Five Days Before Crucial Vote** On 7/16/98, only five (5) days before the crucial 7/21/98 City Council meeting to consider the 2 alternative resolutions (first resolution to grant CCBT and TMK/Hogan joined development rights and the second resolution to grant TMK/Hogan the entire 51 acres), a fund-raiser was held for Liebmann's failed mayoral bid. Approximately $13,500 was raised from a list of people including Hogan, Douglas and other persons connected with them who are connected to the Parking and Development Agreements.

106. **Council Approves TMK/Hogan's Agreement With 5/4 - Liebmann Swing Vote** On 7/21/98 two (2) resolutions were before the City Council. The first was a Resolution to let the TMK/Hogan Team develop their proposed Cinema Complex (on approximately 10-11 acres) and let the CCBT Team develop the remaining property. The second Resolution was to let the TMK/Hogan Team develop the entire 51 acres. The joint development Resolution failed by a 5-4 margin. Liebmann was the "swing" vote against it. The second Resolution giving all 51 acres to the TMK/Hogan Team passed by a 5-4 margin with Liebmann as the "swing" vote for it.

107. **Liebmann Votes For Defendants Because of Their "Contribution"** Although Liebmann had earlier committed to voting for CCBT, Liebmann changed his vote in favor of the TMK/Hogan Development Agreement, and against the compromise resolution

(which offered TMK/Hogan about 10-11 acres for the Cinema Complex and the remaining property to CCBT) because the TMK/Hogan Development Team and Urban Renewal helped him retire his "campaign debts".

108. **TMK/Hogan Drops IMAX From Development** TMK/Hogan dropped the IMAX Theater from its proposed development which it had used as a selling point to be awarded the development.

109. **Video Tapes Show That Hogan Mislead Council About IMAX** On 1/12/99, during a City Council Meeting, a videotape showed the numerous occasions on which Defendant Hogan specifically stated that the IMAX was not only a part of the deal, but it was *"The Mother-Ship"* of the TMK/Hogan Team's proposal.

110. **TMK/Hogan Did Not Have Financing To Build Theater As Promised** On or about 8/23/00, the Edwards Theatres filed for Bankruptcy. One day before the bankruptcy filing (on 8/22/00) Defendant Hogan told Urban Renewal and other City officials that the Defendants, the TMK/Hogan Team, decided to cancel their contract with Edward Theatres because Edwards was unable to obtain financing to build the multi-screen theaters in Bricktown. This statement is contrary to Hogan's representation to Urban Renewal and the selection judges in July of 1997 where he stated that:... ***"We're talking $30 million here, the theater probably $15 million alone. Torchmark can do it out of pocket if leverage is not available. We have the financial ability to build every square inch of it and lease it back"***. But Torchmark was not a partner of TMK/Hogan.

111. **Defendants' Wrongful Acts Resulted In TMK/Hogan Being Awarded the Development as Opposed to CCBT** TMK/Hogan was awarded the rights to develop

South Bricktown as a result of their false and misleading representations to the City as well as other illegal acts. As of the date of the filing of this Complaint, this valuable property that was to be awarded and developed on behalf of the taxpayers of the City of Oklahoma City sits undeveloped.

112. **Four Years & Seven Months After Selected - TMK/Hogan Still Doesn't Have the Financial Ability To Finance Any Project in Bricktown and Now Asks City To Provide $18 Million To Finance Construction of Bass Pro Shop In Bricktown** TMK/Hogan did not have the financial means to construct a cinema complex and lease it back to Edwards Theaters. TMK/Hogan did not have the financial means to construct a substitute cinema complex when it claimed to have a "deal" with SEGA GameWorks. Now (February- March, 2002) TMK/Hogan has allegedly found a new tenant for Bricktown - Bass Pro Shop (a sporting goods store), and again, TMK/Hogan does not have the financial means to build the structure and lease it back to Bass Pro. Instead, TMK/Hogan is asking the City to provide up to approximately $18 million to build the retail facility for Bass Pro.

IX. OTHER RELEVANT FACTS AND MISCONDUCT

113. **Conspiracy to Condemn TTI's 1.4 Acre Canal Front Property** On or about March, 1997, the Defendants conspired with each other, and used their political influence with City officials, to begin condemnation proceedings against Plaintiff TTI, and to take approximately 1.4 acres of TTI's property located on the south edge of the Bricktown canal (between the City's West 25 Acres and the Urban Renewal's East 26 Acres).

114. **Defendant Knew Condemnation Was Not For Public Use, But Rather For TMK/Hogan's Private Profit Making Ventures** Defendant Douglas, as well as, the remaining Defendants knew that the City alleged (in the condemnation proceedings) it needed the TTI property for public parking, parks, and recreational use, but in truth, the intention was to transfer said property to the TMK/Hogan Team not for public use, but rather for private, profit making retail stores, restaurants, and entertainment venues.

115. **Douglas Knew TTI's Condemned Land Was to Be Transferred to TMK/Hogan For Private Development and Kept Such Intent Secret** Defendant Douglas, as the Executive Director of Urban Renewal, knew that the Urban Renewal should have joined the City in the condemnation as soon as it was apparent that the TTI's land was going to be used for private development and not the public use alleged in the City's condemnation case. However, Douglas and Urban Renewal decided not to do so, and instead kept secret the intent to transfer TTI's condemned property to TMK/Hogan.

116. **TTI's Condemned Land Transferred to Urban Renewal - Douglas Caused Urban Renewal To Abstain From Joining City In TTI's Condemnation Case** On or about November 4, 1997, Defendant Douglas, in concert with the Defendants and other unnamed coconspirators, caused the City to transfer the title to TTI's 1.4 acre to the Urban Renewal. Despite the fact that the condemnation case was still pending at that time (which is still pending at the time of filing this Petition), and the title to TTI's condemned land is now in the hands of Urban Renewal, Defendant Douglas in concert with other unnamed co-conspirators, caused the Urban Renewal to abstain from joining as a party to the City's condemnation case.

117. **Douglas, Defendants and Other Unnamed Coconspirators Assist City In Obtaining TTI's 1.4 Acre Canal Front Property By Fraud** Defendant Douglas, all other Defendants here, and other unnamed coconspirators, acted in concert and aided and abated the City's attorneys in making false representations to the court in the condemnation case, by falsely stating that the City needed TTI's 1.4 acre canal-front property for public parking, public park and public recreation when they knew that in truth and in fact their intention was to transfer this land to TMK/Hogan for profit making ventures (retail stores, restaurants, entertainment venues) and NOT for the specific public use as falsely claimed in the City's condemnation pleadings.

118. **Defendants Knew City's Claims of Public Use Was False - Failed to Notify Court** The Defendants knew, at least from November 4, 1997 to the present time (while the condemnation case is still pending), that the City's claims that it needs TTI's canal-front property for public parking, parks and public recreational purposes was false, but yet, they failed to notify the court of the true intention - i.e., for use by TMK/Hogan for private retail shops, restaurants, and/or other private ventures.

119. **Defendants Knew If The Truth Be Known - TTI's Condemnation Be Dismissed** Defendants knew that if they came forward and advised the court of their true intended use of TTI's condemned property, that the trial court would dismiss the condemnation and return the land to TTI. They chose not to reveal the truth to the court, so they can use the condemnation proceeding as a tool to "legally" steal TTI's canal-front property.

X. MAIL FRAUD.

120. **Use of Mail in Furtherance of Fraud (submitting Torchmark's Annual Reports)** Defendants mailed or caused to be mailed, copies of Torchmark Corporation's Annual Reports from Alabama to Oklahoma in furtherance of their fraud on at least the following occasions:

a. On or about 6/24/96 mailed the Torchmark Corporation's 1995 10-K Annual Report and submitting the same to Urban Renewal in response to the 7/25/96 RFP;

b. On or about 7/15/97 mailed the Torchmark Corporation's 1996 10-K Annual Report and submitting the same to Urban Renewal in response to the 7/17/97 RFP;

c. On or about 7/29/97 mailed the Torchmark Corporation's 1996 10-K Annual Report and submitting the same to Urban Renewal and to the City Council on or about 7/31/97 for the Council's 8/5/97 meeting;

d. On or about 6/5/98 mailed the Torchmark Corporation's 1997 10-K Annual Report and submitting the same to Urban Renewal and to the City Council for its 6/9/98 Council meeting and to the MAPS Oversight Board for its 6/25/98 meeting.

121. **Other Instances of Mail Fraud** From about 6/25/96 through the time of filing this Complaint, the Defendants used interstate mail services (such as US Postal, FedEx, UPS, DHL, etc.) to exchange numerous documents (between the Alabama Defendants and the Oklahoma

Defendants) in furtherance of a fraud, including but not limited to the following:

a. On or about 6/20/96 mailing documents containing TMK/Hogan alleged partners' experience and financial ability as presented to Urban Renewal in response to the 7/25/96 RFP;

b. During the months of September and October, 1996, mailing additional information containing TMK/Hogan alleged partners' experience and financial ability as presented to Urban Renewal as an Addendum to the TMK/Hogan's response to the 7/25/96 RFP;

c. On or about 7/14/97 mailing documents containing TMK/Hogan alleged partners' experience and financial ability and commitments as presented to Urban Renewal in response to the 7/17/97, and presented to Urban Renewal selection judges during the 7/21/97 oral presentation;

d. On or about 7/30/97 mailing additional documents containing TMK/Hogan alleged partners' experience and financial ability as presented to the City Council on about 8/1/97 and officially presented and discussed during the 8/5/97 City Council meeting;

e. On or about 5/20/98 mailing documents presented to Urban Renewal Commissioners regarding the "need" to control the entire property (East and West acreage);

f. On or about 6/4/98 mailing additional documents presented to the City Council on 6/8/98

regarding Section 108 loan and drafts of the Development Agreement;

g. During the entire month of June, 1998 mailing several draft of the Development Agreement and TMK/Hogan's alleged "partners" experience and financial ability to develop the proposed Cinema Complex as presented to Urban Renewal, during the MAPS Board 6/25/98 meeting, and City Council 6/30/98 meeting;

h. On or about 7/15/98 mailing modified drafts of the Development Agreement and additional developer's supportive documents (including color brochures of Torchmark's Liberty Park development in Alabama) as presented to the City Council for its 7/21/98 meeting;

i. On or about 12/1/98, mailing additional documents relating to the development plans as submitted to Urban Renewal's Commissioners for their 12/4/98 meeting;

j. On or about January 2, 1999, mailing additional documents relating to the development plans as submitted to the City Council for its 1/5/99 meeting;

k. On or about 1/8/99, mailing additional "supportive" documents relating to the development plans as submitted to the City Council for its 1/12/99 meeting;

l. From about 1/12/99 through 2/26/99 mailing to each other documents relating to the Defendants' responses and preparation for Hogan's testimony during the 3/1/99 "friendly" Declaratory Judgment lawsuit;

m. During the months of August - September, 2000 mailing each other several documents relating to extending the development performance by 300 days as submitted to Urban Renewal, MAPS Board and City Council;

n. On or about 3/18-20/01 mailing documents regarding the development "progress" as submitted to Urban Renewal and MAPS Board during its 3/21-22/01 meetings.

XI. WIRE FRAUD.

122. **Use of Wire in Furtherance of Fraud** From about 6/25/96 through the time of filing this Complaint, the Defendants used telephone and other wire services (fax, internet, etc.) to exchange numerous documents (between the Alabama Defendants and the Oklahoma Defendants) and discuss their conspiracy relating the fraudulent representations, including but not limited to:

a. On or about 7/20/96 held telephone discussions and sent via electronic means, documents containing TMK/Hogan alleged partners' experience and financial ability as presented to Urban Renewal in response to the 7/25/96 RFP;

b. During the months of September and October, 1996, held telephone discussions and sent via electronic means, additional information containing TMK/Hogan alleged partners' experience and financial ability as presented to Urban Renewal as an Addendum to the TMK/Hogan's response to the 7/25/96 RFP;

c. On or about 7/14/97 held telephone discussions and sent via electronic means, documents containing TMK/Hogan alleged partners'

experience and financial ability and commitments as presented to Urban Renewal in response to the 7/17/97, and presented to Urban Renewal selection judges during the 7/21/97 oral presentation;

d. On or about 7/30/97 held telephone discussions and sent via electronic means, additional documents containing TMK/Hogan alleged partners' experience and financial ability as presented to the City Council on about 8/1/97 and officially presented and discussed during the 8/5/97 City Council meeting;

e. On or about 5/20/98 held telephone discussions and sent via electronic means, documents presented to Urban Renewal Commissioners regarding the "need" to control the entire property (East and West acreage);

f. On or about 6/4/98 held telephone discussions and sent via electronic means, additional documents presented to the City Council on 6/8/98 regarding Section 108 loan and drafts of the Development Agreement;

g. During the entire month of June, 1998 held telephone discussions and sent via electronic means, several draft of the Development Agreement and TMK/Hogan's alleged "partners" experience and financial ability to develop the proposed Cinema Complex as presented to Urban Renewal, during the MAPS Board 6/25/98 meeting, and City Council 6/30/98 meeting;

h. On or about 7/15/98 held telephone discussions and sent via electronic means, modified drafts of

the Development Agreement and additional developer's supportive documents (including color brochures of Torchmark's Liberty Park development in Alabama) as presented to the City Council for its 7/21/98 meeting;

i. On or about 12/1/98, held telephone discussions and sent, via electronic means, additional documents relating to the development plans as submitted to Urban Renewal's Commissioners for their 12/4/98 meeting;

j. On or about January 2, 1999, held telephone discussions and sent via electronic means, additional documents relating to the development plans as submitted to the City Council for its 1/5/99 meeting;

k. On or about 1/8/99, held telephone discussions and sent via electronic means, additional "supportive" documents relating to the development plans as submitted to the City Council for its 1/12/99 meeting;

l. From about 1/12/99 through 2/26/99 held telephone discussions and sent via electronic means, to each other documents relating to the Defendants' responses and preparation for Hogan's testimony during the 3/1/99 "friendly" Declaratory Judgment lawsuit;

m. During the months of August-September, 2000 held telephone discussions and sent via electronic means, each other several documents relating to extending the development performance by 300 days as submitted to Urban Renewal, MAPS Board and City Council;

n. On or about 3/18-20/01 held telephone discussions and sent via electronic means, documents regarding the development "progress" as submitted to Urban Renewal and MAPS Board during its 3/21-22/01 meetings.

123. **Wire Fraud Used In Fabricated 8/1/98 TMK/Hogan's Proposal** The Defendants, conspired with each other in fabricating a proposal which was submitted by Defendant Douglas to the City Council on 8/1/97. This fabricated proposal was much larger than the (six) 6 page proposal that TMK/Hogan submitted on the 7/17/97 RFP deadline. This proposal contains documents that were faxed AFTER the 7/17/97 deadline - thus, the fraudulent and fabricated proposal was produced in part by committing wire fraud.

COUNT I – RICO VIOLATIONS

PREVIOUS FRAUD, CONSPIRACY TO DEFRAUD, AND BID RIGGING PRIOR CONDUCT FOR ESTABLISHMENT OF RACKETEERING

Plaintiffs incorporate each and every allegation stated above as if fully restated herein and further allege as follows:

1. **First Fraud, Conspiracy and Racketeering Activities of Defendants Hogan, TMK/Hogan, Hogan Property, Stonegate, and TDC (The "Initial TMK/Hogan Team")**

Fraudulent Representation of Financial Condition and Partners' Board Members and Officers

124. The Defendants, the Initial TMK/Hogan Team, have conspired with each other, and willfully, knowingly and intentionally engaged in fraudulent activities for the purpose of eliminating the chances of a non-party

competitor from being selected and/or awarded Urban Renewal's development rights to the East 26 Acres (the 7/25/96 RFP), and to these Defendants' advantage, in violation of 18 U.S.C. 1 *et seq*, 10 U.S.C. § 2, and other Federal and State Statutes, with such conduct including but is not limited to the following:

1. **False Identification of TMK/Hogan's Partner and Concealment of True Partner** Knowingly, willfully and intentionally representing to Urban Renewal that Torchmark Development Corporation, the subsidiary of the $10 Billion Torchmark Corporation was the 50 % partner in TMK/Hogan, and concealing the identity of the true partner, Stonegate.

2. **Fraudulent Submission of Torchmark's Financial Statements** Knowingly, willfully and intentionally submitting to Urban Renewal false financial information, including, but not limited to Torchmark Corporation's 1995 Annual Report and financial statement, as the financial statement of the 50% partner of TMK/Hogan Joint Venture.

3. **False & Misleading Representation of Partner's Board Members/Officers** Knowingly, willfully and intentionally representing to Urban Renewal that the board members and officers of Torchmark Corporation and it subsidiary were the board members and officers of TMK/Hogan's 50% partner.

4. **Intentional Fraud For Purpose of Winning Bid** Fraudulently misrepresenting the true identity of the partners in TMK/Hogan Joint Venture, to cause Urban Renewal to believe that the joint venture was in greater financial

condition and had greater financial ability to finance the proposed development than the other bidder, increasing their changes to win the bid, which ultimately was achieved - to their competitor's detriment - in violation of the Sherman Act- 15 U.S.C. § 1 *et seq.*, and 79 O.S. § 1 *et seq.*

Bid-Rigging and Anticompetitive Conduct In Achieving Development Rights

125. The Defendants, the Initial TMK/Hogan Team, conspired with each other, and willfully, knowingly and intentionally engaged in anti-competitive conduct in an effort to eliminate the chances of a non-party competitor from being selected and/or awarded Urban Renewal's July 25, 1996 development rights to the East 26 Acres, in violation of 18 U.S.C. § 1962, 15 U.S.C. § 2, 15 U.S.C. § 2, and 79 O.S. § 1 *et seq.* These Defendants' unfair, improper and illegal conduct includes, but is not limited to the following:

(a) **False Representation of Development Experience** Submitting to Urban Renewal documents and information showing development experience of the Torchmark Development Corporation as if the experience of the Torchmark Development Corporation was the experience of TMK/Hogan's 50% partner, when in truth and fact, they knew such information was false, as it did not reflect the development experience of the true partner - Stonegate.

(b) **False Representation of Financial Ability To Implement Development** Submitting to Urban Renewal documents and information showing financial ability of the Torchmark Corporation as

if the Torchmark Corporation was the 50% partner in TMK/Hogan, when in truth, they knew such information was false, and did not reflect the financial condition or financial ability of the true partner - Stonegate.

(c) **Unfair Use of Personal Relationship To Influence RFP Selection** Unfairly and improperly using their personal and business relationships with Urban Renewal Commissioners and staff, including but not limited to Defendant Douglas, to influence Urban Renewal's selection committee to act and vote in Defendants' favor and to their competitor's detriment.

(d) **Interference & Abuse of the Public Bid Process** Interfering with and abusing the bidding process adopted by Urban Renewal (knowing that in a public bid process - the developer's experience and financial ability are the two main factors in granting contracts).

Mail Fraud, Wire Fraud, and Other Federal and State Laws Violations - Initial Racketeering Activities

126. **Mail Fraud** The Initial TMK/Hogan Team's use of mail to transfer documents presented to Urban Renewal in response to the 7/25/96 RFP, in furtherance of their fraud, constitutes a violation of 18 U.S.C. § 1341.

127. **Wire Fraud** The Initial TMK/Hogan Team's use of facsimile and/or other electronic mean, to transfer documents presented to Urban Renewal in response to the 7/25/96 RFP, and holding telephone conversations, in furtherance of their fraud, constitutes a violation of 18 U.S.C. § 1343.

128. **Other Federal & State Laws Violations** In addition to RICO violations, the Initial TMK/Hogan Team's fraudulent conduct, is also a violation of other Federal and State Fraud and Conspiracy laws, including but not limited to 31 U.S.C. § 3802; 15 O.S. § 136; 21 O.S. § 421; Common Law Tort, Fraud and Conspiracy.

129. **Initial Racketeering Established** The Defendants' (Hogan, TMK/Hogan, Hogan Property, Elgin, Stonegate and TDC) fraudulent activities as stated above and hereinafter, constitute "prior" racketeering activities as defined by 18 U.S.C. § 1961 *et seq.*

B. Continued Fraudulent Representation of Financial Statement and Developer's Financial Abilities

Plaintiffs incorporate each and every allegation stated above as if fully restated herein and further allege as follows:

Fraudulent Representation of Financial Condition & Partners' Board Members/Officers

130. The Defendants, the TMK/Hogan Team, conspired with one another, and willfully, knowingly and intentionally engaged in fraudulent and improper activities relating to Urban Renewal's 6/26/97 RFP (the "97 RFP") for the purpose of defeating the CCBT Team in gaining the development rights to the entire 51 acres in Bricktown (the Parking Agreement and the Development Agreement), in violation of 18 U.S.C. 1961 *et seq,* and other Federal and State Statutes. These Defendants' conduct includes, but is not limited to the following:

1. **False Identification of TMK/Hogan's Partner and Omission of True Partner** Knowingly, willfully and intentionally representing to Urban Renewal that Torchmark Development Corporation, the subsidiary of the $10 Billion

Torchmark Corporation is the 50 % partner in TMK/Hogan, and concealing the identity of the true partner, Stonegate.

2. **Fraudulent Submission of Torchmark's Financial Statements** Knowingly, willfully and intentionally submitting to Urban Renewal false financial information, on numerous occasions, including, but not limited to presenting Torchmark Corporation's 1995, 1996 and 1997 Annual Reports and financial statements, as if such Reports and financial statements were those of the 50% partner of TMK/Hogan Joint Venture.

3. **False Representation of Financial Ability to Construct Entire Project** Knowingly, willfully and intentionally falsely representing that they had the financial ability to build every square inch of their proposed development and lease it back to the tenants.

4. **False Representation of Readiness to Begin Construction Immediately** Knowingly, willfully and intentionally falsely representing that they were ready to begin construction immediately, and continuing to provide false constructions dates to get the contracts away from the Plaintiffs' CCBT Team.

5. **False Representation of Torchmark's Senior Management Participation** Knowingly, willfully and intentionally falsely representing to the City and Urban Renewal that the senior management of Torchmark Corporation (the $10 billion public company) were committed and supportive of TMK/Hogan's Bricktown development - which mislead Urban Renewal,

City and the public to believe that Torchmark Corporation's management is the same management as that of TMK/Hogan's 50% partner.

6. **Intentional Fraud For Purpose of Winning Contract** Fraudulently misrepresenting the true identity of the partners in TMK/Hogan Joint Venture, causing City officials to believe that TMK/Hogan Parking and Development Teams were in greater financial condition and had greater financial ability than the Plaintiffs' CCBT Team, for the purpose of preventing the contracts from being awarded, in whole or in part, to the Plaintiffs' CCBT Team, which ultimately was achieved - to Plaintiffs' detriment - in violation of 18 U.S.C. § 1962.

C. Bribing City Councilman To Gain The "Swing" Vote In Contract Approval

Plaintiffs incorporate each and every allegation stated above as if fully restated herein and further allege as follows:

131. **Contribution to Councilman's Campaign Debts In Exchange For His Vote - Is Bribery** By arranging the sum of approximately $13,500.00 to be contributed to "retire" Councilman Liebmann's alleged campaign debts from his failed run for Mayor, in exchange for his "swing" vote, the Defendants, the TMK/Hogan Development Team, with the aid of Defendant Douglas and other unnamed persons, engaged in illegal activities in violation of 18 U.S.C. § 201; 21 O.S. § 38 *et seq.*, and in furtherance of their racketeering activities pursuant to 18 U.S.C. § 1962.

132. **Bribing Councilman Liebmann Resulted In A Swing Vote In Favor Of Defendants** As a direct result of bribing Councilman Liebmann, the TMK/Hogan Team's Development Agreement was approved by City Council by a margin of 5-4 (5 in favor and 4 against), Likewise, Councilman Cornet's Resolution (which offered to grant the TMK/Hogan Team 10-11 acres and grant the Plaintiffs' CCBT Team the development rights to the remaining 40-41 acres) was declined by a margin of 5-4, with Liebmann's vote as the "swing vote".

133. **Bribed Swing-Vote Resulted In Damages To Plaintiffs** As a direct result of bribing Councilman Liebmann, the Plaintiffs' CCBT Team lost the rights to develop their planned $160-200 million projects and consequent anticipated profits.

DAMAGES RELATING TO ALL SUBSECTIONS OF COUNT I

Damages Count I-A (First Fraud, Conspiracy, Initiation & Continuation of Racketeering Activities)

134. **Damages to TTI's Property Value** By reason of the Initial TMK/Hogan Team's violations, and by eliminating the development of the East 26 Acres by a genuine and qualified non-party development team (Sooner Investments), whom otherwise would have invested millions of dollars in developing the East 26 Acres, the Plaintiff, TTI, has been damaged by losing prospective advantages, including the lost opportunity of the increased value of its adjacent property, in an amount undetermined at the time of filing this Petition, but no less than $75,000, and therefore entitled to actual damages (to be determined by the Court), plus punitive damages in an amount this Court deems just and proper, pre-judgement and post-judgement interest and reasonable attorneys' fees.

Damages - Count I-B (Racketeering - Fraud, Conspiracy, Mail & Wire Fraud)

135. As a result of Defendants' Racketeering activities, including, but not limited to fraud, conspiracy to defraud, mail and wire fraud, as described above, the Plaintiffs have been injured and damaged and are entitled to recover from all Defendants actual damages as follows: (a) at least $200 million to BT-2000; (2) at least $ 7 million to Plaintiff TTI ; and at least $ 3 million to Plaintiff Tal - plus punitive damages and costs, treble damages, the cost of litigation, pre-judgment and post-judgement interest and reasonable attorneys' fees.

Damages - Count I-C (Bribing City Councilman To Gain The "Swing" Vote)

136. By reason of Defendants' (TMK/Hogan, Hogan Property, Hogan, Hogan Parking and Douglas) illegal conduct in gaining the City Council Approval of the Redevelopment Agreement, as fully stated above, including, but not limited to bribing Councilman Liebmann for his vote, which ultimately became the 5-4 "swing vote," the Plaintiffs have been injured and damaged and are entitled to recover from these Defendants actual damages of at least: (a) $200 million to BT-2000; (2) $7 million to Plaintiff TTI ; and (c) S3 million to Plaintiff Tal, plus punitive damages and costs, treble damages, the cost of litigation, pre-judgment and post-judgement interest and reasonable attorneys' fees.

COUNT II
SHERMAN ACT VIOLATION (15 U.S.C. § 2)

Plaintiffs incorporate each and every allegation stated above as if fully restated herein and further allege as follows:

Bid-Rigging & Unfair Competition Activities In Achieving Development Rights

137. **Conspiracy - Agreement To Award Contracts Prior To RFP Publication** All Defendants have conspired with each other, and willfully, knowingly and intentionally engaged in unlawful acts and practices described above, to fabricate and create the illusion of a "legal" public bid, when in fact, the outcome of the 6/26/97 published RFP was predetermined by agreements between the TMK/Hogan Team and its business associates and Defendant Douglas. These Defendants engaged in unfair, improper and illegal conduct which includes, but is not limited to the following:

(a) **False & Deceptive Representation of Development Experience** Fraudulently submitting to Urban Renewal documents and information showing development experience of the Torchmark Development Corporation and representing such as the experience of TMK/Hogan's 50% partner, when in truth and fact, they knew such representation was false, as it did not reflect the development experience of the true partner - Stonegate.

(b) **False & Deceptive Representation of Financial Ability To Implement Development** Fraudulently submitting to the City and Urban Renewal documents and information showing financial ability of the Torchmark Corporation as if it were the 50% partner in TMK/Hogan, when they knew said information did not represent the financial condition of its own or the financial ability of the true partner - Stonegate.

(c) **Pre-RFP Arrangements & Agreements & To Award Contracts To TMK/Hogan** Fraudulently conspiring with each other and making pre-RFP arrangements and agreements to award the Parking and Development Agreements to the TMK/Hogan Teams.

(d) **Political Influence & Power to Use RFP Process As A Tool to Cover Pre-RFP Selection** Defendants used political influence, and, with Defendant Douglas and other unnamed coconspirators, abused official positions, and used the RFP public-bid process as a tool to coverup their fraudulent, deceptive, improper, anti-competitive and illegal activities.

(e) **Cover-Up Business Relationship With City/Urban Renewal Officials** Knowingly, willfully and intentionally not disclosing the business relationship between the TMK/Hogan Parking Team, the TMK/Hogan Development team and certain public officials who had voting power and/or influence over the selection process and/or the approvals and/or voting for the Parking and Development Agreements.

(f) **False Affidavits & Testimony** Executing false affidavits and giving false testimony relating to the relationships between the Defendants and public officials.

(g) **Mail & Wire Fraud In Bid-Rigging** Committing mail and wire fraud in covering-up their pre-RFP agreements and arrangements.

(h) **Fabricating RFP Proposal After 7/17/97 Deadline** Fabricating a proposal after the RFP deadline, and willfully, knowingly, and

intentionally submitting the fabricated proposal as the proposal submitted by TMK/Hogan on or before the 7/17/97 RFP deadline.

(i) **False Representation About CCBT's Proposal** Knowingly, intentionally and willfully, by direct statement and/or by implication, making false representations that the CCBT and/or its $160-200 million development proposal was not "real", and/or that the CCBT Team was seeking monetary public participation in their development projects, when in fact they knew the truth that not only CCBT did not ask for public participation, but in fact, CCBT was committed to invest between $8-11 million in public improvements.

(j) **Use of Media to Defame Plaintiffs** Defendants, the TMK/Hogan Team, Hogan and Douglas, willfully and maliciously used their position and influence to cause news stories to be broadcast and printed in newspapers, which contained information that was defamatory and false and/or inaccurate about the Plaintiffs and the CCBT team, especially against Plaintiff Tal, to gain public support for TMK/Hogan's development from City officials and the public.

(k) **Injury To Plaintiffs' Business and Reputation Assist in Gaining contracts** As a direct, proximate and consequent cause of the Defendants' false, inaccurate and defamatory statements, Plaintiffs, BT-2000 and TTI business and reputation has been injured, and likewise, Plaintiff Tal has suffered injuries to his reputation and lost the respect and dignity he previously had in the community. Engaging in such intentional and malicious conduct, the

Defendants not only caused injuries to the Plaintiffs reputation, but were also used by the Defendants as an improper and unfair means to gain public and City support and in awarding the TMK/Hogan's Team the Contracts.

(l) **TMK/Hogan False & Deceptive Conduct Relating To "No Public Participation"** The TMK/Hogan Team, Defendant Douglas, and other unnamed coconspirators, falsely represented during the selection process, directly and/or by implication, that the TMK/Hogan Team not only had all the financing needed to implement their Cinema Complex project, but that TMK/Hogan was **not** asking for any monetary public participation, and after competitors were "eliminated", the TMK/Hogan did indeed seek, and receive more than $3 million in public participation to improve their development project site, a contract to purchase the land below City's cost, and now (early 2002) the Defendants are asking the City to provide approximately $18 Million to build the Bass Pro retail shop on the property they were given as a result of the illegal RFP selection.

(m) **False Representations of Specific Tenants** Knowingly, intentionally and willfully made false representations that their development included specific tenants (IMAX and others), and stated, directly or by implication that the TMK/Hogan Team had agreements with such tenants, when in fact and truth they knew such representation was false, deceptive, and misleading.

(n) **False Representation of Property Size Needed For Cinema Complex** Knowingly, intentionally

and willfully representing, directly and by implication, that the Edwards Theatre tenant needed at least 31 acres for its Cinema Complex, when in truth and fact, TMK/Hogan Team was committed to lease to Edwards Theatres **only 3.67 acres.**

138. **Defendants Violation of The Sherman Act and Other Statutes** All Defendants' activities and participation in the bid-rigging and other related conduct (as described in more detail above), constitutes unlawful, improper, anti-competitive, deceptive and unfair conduct in violation of the Sherman Act, 15 U.S.C. § 2, as well as fraud in violation of 18 U.S.C. §§ 1341 and 1342, and in furtherance of their RICO violation pursuant to 18 U.S.C. § 1 *et seq*. The Defendants' bid-rigging conduct also violates Oklahoma State laws 79 O.S. § 1 *et seq*.

139. **Damages Caused to Plaintiffs** Because of the Defendants', TMK/Hogan, Hogan Property, Hogan, Hogan Parking, Elgin, Stonegate, TDC and Douglas, violation of the Sherman Act and relevant Oklahoma State anti-competition laws, including, but not limited to engaging in bid-rigging, conspiracy to use, and actual use of the RFP public bid process as a "farce" to cover up the illegal, deceptive, unfair and improper conduct, the Plaintiffs have been damaged and are entitled to recover from these Defendants actual damages as follows: the Plaintiffs have been injured and damaged and are entitled to recover from these Defendants actual damages of at least: (a) $200 million to BT-2000; (b) $7 million to Plaintiff TTI ; and (c) $3 million to Plaintiff Tal, plus punitive damages and costs, treble damages, the cost of litigation, pre-judgment and post-judgement interest and reasonable attorneys' fees.

COUNT III

TORTIOUS INTERFERENCE WITH PLAINTIFFS' BUSINESS

Plaintiffs incorporate each and every allegation stated above as if fully restated herein and further allege as follows:

140. **Plaintiffs Had Business & Precontractual Relationship With The City** Plaintiffs had an ongoing business relationship with a third party, the City, which contemplated the development by the Plaintiffs of a $160-$200 multi use projects including, but not limited to, shopping mall, entertainment, office, residential and parking facilities in the South Bricktown area of Oklahoma City.

141. **Plaintiffs Had A Reasonable Expectation Of Profits** Plaintiffs had a reasonable expectation of economic gain from developing the area as proposed by them and a gain of financial benefits and profit from said development.

142. **City Is An Independent Party** During the above-referenced time, and at all times relevant to this action, the third party, the City, was an independent entity, unaffiliated with either Plaintiffs or Defendants.

143. **Plaintiffs Attracted Investors & National Developer** Based on this business relationship with the City, and upon representations made by City officials, the Plaintiffs attracted numerous investors as well as a national developer, The Cordish Company, to enter into a partnership with Plaintiff, BT-2000 to invest, develop and implement the specific developmental designs in the South Bricktown area (the "CCBT' Team Development Plan").

144. **Defendants Began Interfering With Plaintiffs' Relationship With City** During the second half of 1996

up until 7/21/98, while the Plaintiffs and the City were actively and in good faith conducting negotiations for a contract in connection with the business relationship described above, Defendants, independently and in concert with each other, undertook a willful course of conduct for the purpose of interfering with and destroying Plaintiffs relationship with the City.

145. **Defendants Disturbed Plaintiffs' Business** Defendants' conduct as more fully described above, was intended to, and did in fact, disrupt Plaintiffs' business relationship with the City, and which ultimately did interfere with that business relationship.

146. **Defendants' Conduct Was Malicious** Defendants' actions were committed with malice toward Plaintiffs and a willful desire to injure Plaintiffs economically, and with wanton disregard of Plaintiffs' rights.

147. **Defendants' Conduct Caused Plaintiffs' Loss of Prospective Business Relationship With City** The conduct undertaken by Defendants as described herein, caused the loss or impairment of Plaintiffs' prospective business relationship with the City, and resulted in the Plaintiff's loss of the expectancy of contract and economic gain arising from the relationship, including in the form of lost prospective advantages, lost rights to develop and profit from said development, delays and inability to develop TTI's property, and actual expenses and other costs relating to the development design and the expenses for preparation of necessary legal contracts.

148. **Defendants' Conduct Not Justified Nor Privileged** Defendants were neither justified nor privileged to engage in the conduct described herein, which resulted in the impairment or loss of Plaintiffs' prospective business relationship with the third party, The City.

149. **Defendants Injured & Damaged Plaintiffs** By reason of all Defendants' tortious interference with Plaintiffs' business, Plaintiffs have been injured in their business and property in that: (a) BT 2000 and TTI lost and continues to lose business good will; (b) BT-2000 and TTI have suffered and will continue to suffer diminishment in its going concern value; and (c) Tal lost and will continues to lose income from inability to manage CCBT's development projects.

150. **Plaintiffs Entitled To Recovery** By reason of all Defendants' tortious interference with Plaintiffs' business, Plaintiffs are entitled to recover from these Defendants actual damages as follows: (a) at least$200 million to BT-2000; (b) at least $ 7 million to Plaintiff TTI ; and (c) at least $ 3 million to Plaintiff Tal - plus punitive damages and costs, the cost of litigation, pre-judgment and post-judgement interest and reasonable attorneys' fees in favor of each Plaintiff.

COUNT IV

CONSPIRACY TO CONDEMN TTI'S PROPERTY BY FRAUD

Plaintiffs incorporate each and every allegation stated above as if fully restated herein and further allege as follows:

151. **Defendants' Obtained TTI's Canal-Front Property By Fraudulent Means** Defendants' conduct, as more fully described above, was intended to, and did in fact, result in obtaining TTI's 1.4 acre canal-front property by fraudulent activities.

152. **Defendants' Disrupted Plaintiffs From Developing Their Canal-Front Property** Defendants' obtaining TTI's property by fraudulent and illegal means disrupted TTI's and BT-2000's plans to develop their 1.4 acre canal-front property.

153. **Defendants' Conduct In Obtaining TTI's Property Was a Willful Desire To Injure Plaintiffs and Disregard Plaintiffs' Constitutional Rights** Defendants' actions in obtaining TTI's canal-front property were committed with malice toward Plaintiffs and a willful desire to injure Plaintiffs economically, and with wanton disregard of Plaintiffs' right to own, enjoy, and profit from their private property as afforded to them pursuant to the Fifth Amendment of the United States Constitution.

154. **Defendants' Conduct Was Intended To Make Substantial Profit From Obtaining TTI's Canal-Front Property** Defendants' action in using their political influence on City officials, and by persuading the City to condemned TTI's canal-front property, which in the open market is worth more than five million dollars ($5,000,000), and to purchase the land from the City for one hundred sixty five thousand dollars ($165,000), was done intentionally and willfully for the purpose of making a substantial profit to the Plaintiffs' detriment.

155. **TMK/Hogan Teams' Wilful Intent To Profit From Plaintiffs' Design and Plans For Canal-Front Property** Defendants knew that TTI and BT-2000 had specific plans and designs for the development of the 1.4 acre canal-front property and that such plans had a great profit potential. Defendants acted in concert with each other and other unnamed coconspirators to not only steal TTI's canal-front property, but also to copy TTI's and BT-2000's plan for their own use and profit.

RELIEF SOUGHT

WHEREFORE, Plaintiffs demands that:

1. **Count I-A Relief** With respect to Count I-A, (i) Defendants, TMK/Hogan, Hogan Property, Hogan, Elgin, Stonegate and TDC, be adjudged to have engaged in conduct in violation of 18 U.S.C. § 1341; 18 U.S.C. § 1341;i5 U.S.C. § 2; and prior RICO acts pursuant to 18 U.S.C. § 1961 *et seq.*, and, (ii) judgment against these Defendants and in favor of Plaintiff TTI for actual damages caused lost opportunity of the increased value of its property, in an amount to be determined by the Court, plus punitive damages in an amount this Court deems just and proper, pre-judgement and post-judgement interest and reasonable attorneys' fees.

2. **Count I-B Relief** With respect to Count I-B, ALL Defendants be adjudged to have engaged in racketeering activities violation of 18 U.S.C. § 1961, *et seq,* 18 U.S.C. 1341; 18 U.S.C. § 1341; 15 U.S.C.§ 2; and 15 O.S. § 136, and that judgment against these Defendants and in favor of Plaintiffs for actual damages as follows: (a) at least$200 million to Plaintiff BT-2000; (b) at least $ 7 million to Plaintiff TTI ; and (c) at least $ 3 million to Plaintiff Tal, treble damages, the cost of litigation, pre-judgment and post-judgement interest and reasonable attorneys' fees in favor of each Plaintiff; and

3. **Count I-C Relief** With respect to Count I-C, Defendants Hogan, TMK/Hogan, Hogan Property, Hogan Entertainment, Hogan Parking, and Douglas be adjudged to have engaged in bribes in violation of 18 U.S.C. § 201, and 21 O.S. § 38 *et seq.*, and that judgment against these Defendants and in favor of Plaintiffs for actual damages of at least: (a) the sum of $200 million to BT-2000; (b) the sum of $ 7 million to Plaintiff TTI ; and (c) the sum of $ 3 million to Plaintiff Tal, treble damages, the cost of litigation, pre-judgment and post-judgement interest and reasonable attorneys' fees; and

4. **Count II Relief** With respect to Count II, ALL Defendants be adjudged to have engaged in bid rigging, deceptive and unfair competition conduct in violation of Section 2 of the Sherman Act (15 U.S.C. § 2) and that judgment against these Defendants and in favor of Plaintiffs for actual damages of at least: (a) the sum of $200 million to BT-2000; (b) the sum of $ 7 million to Plaintiff TTI; and (c) the sum of $ 3 million to Plaintiff Tal, treble damages, the cost of litigation, pre-judgment and post-judgement interest and reasonable attorneys' fees; and

5. **Count III Relief** With respect to Count III, ALL Defendants be adjudged to have engaged in tortious interference with Plaintiffs' business and that judgment against these Defendants and in favor of Plaintiffs for actual damages of at least: (a) the sum of $200 million to BT-2000; (b) the sum of $ 7 million to Plaintiff TTI ; and (c) the sum of $ 3 million to Plaintiff Tal, plus punitive damages and cost, the cost of litigation, pre-judgment and post-judgement interest and reasonable attorneys' fees; and

6. **Count IV Relief** With respect to Count IV, ALL Defendants be adjudged to have engaged in fraudulent activities in using their political influence to condemn TTI's 1.4 acre canal-front property and to then transfer the land to the TMK/Hogan Team, and that judgment against these Defendants and in favor of Plaintiffs for actual damages of at least: (a) the sum of $10 million to BT-2000; (b) the sum of $ 16 million to Plaintiff TTI ; and (c) the sum of $ 1 million to Plaintiff Tal, plus punitive damages and costs, the cost of litigation, pre-judgment and post-judgement interest and reasonable attorneys' fees; and

Permanent Injunction Sought

7. All Defendants be permanently enjoined from activities in violation of 18 U.S.C. § 1861 *et seq*; and

8. All Defendants be permanently enjoined from activities in violation of 15 U.S.C. § 1, *et seq.*; and 79 O.S. § 1, *et seq.*, and

9. All Defendants be permanently enjoined from making proposals for development projects in the State of Oklahoma and especially to the City of Oklahoma City and any of its trusts or authorities especially Urban Renewal ; and

10. Plaintiffs be granted such other and further relief this Court deems appropriate.

JURY TRIAL DEMANDED.

Dated: April 1, 2002.

S/Moshe Tal
Moshe Tal
1004 S.W. 95th Street
Oklahoma City, Oklahoma 73139
Telephone: (405) 691-2414
Facsimile: (405) 692-0667

Individually, and on behalf of
BRICKTOWN 2000, INC. and
TAL TECHNOLOGIES, INC.

VERIFICATION

State of Oklahoma)
) SS:
County of Oklahoma)

Moshe Tal, of lawful age, being first duly sworn upon oath, says:

I am the individual Plaintiff in this cause of action and the President of the two corporate plaintiffs. I have written and read the Complaint and understand the contents, including all allegations and legal issues. The matter and statements contained in this Complaint are true and correct according to my best information, recollection and belief.

S/Moshe Tal
Moshe Tal

Subscribed and sworn to before me, a Notary Public, this 1st day of April, 2002.

S/notary public
Notary Public

My Commission Expires:

_____

[Seal]

In The United States District Court
For the Western District of Oklahoma

BRICKTOWN 2000, INC.; TAL TECHNOLOGIES, INC.,	)	
Plaintiffs,	)	Civil No. 02-0324F
vs.	)	
DAN RANDOLPH HOGAN, et al.,	)	
Defendants.	)	

PLAINTIFFS' COMBINED RESPONSE TO ALL DEFENDANTS' MOTIONS TO DISMISS, AND BRIEF IN SUPPORT

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Attorney for Plaintiffs

March 10, 2003

[Table of contents and Authorities Omitted]

Preliminary Statement

Plaintiffs Bricktown 2000, Inc. and Tal Technologies, Inc. ("Plaintiffs") herewith

respectfully submit their Brief in opposition to (i) the "Hogan Group[§§§§§§§§§§§§§§§]"'s motion and brief to dismiss Plaintiffs' Second Amended Complaint ("Hogan Brief"); (ii) the motion and brief to dismiss the Second Amended Complaint by Defendant Tiana P. Douglas ("Douglas Brief"): and (iii) the amicus brief of the City of Oklahoma City ("the City") and the Oklahoma City Urban Renewal Authority ("OCURA"), the latter of which is designated in the Second Amended Complaint as one of the two 18 U.S.C. §1961(4) "Enterprises" herein ("Amici Brief").

The Second Amended Complaint portrays Defendants' fraudulent control. within the explicit terms of 18 U.S.C. §1962(b), of both OCURA and the Oklahoma City Council ("the Council"), via numerous means, principally financial. These said means include (i) Defendants Dan Randolph Hogan, Mark D. Elgin, and their companies, Hogan Property Management L.L.C. and Stonegate Management Company L.L.C.'s becoming, in early 1996, OCURA's landlord at below market rent, at 204 N. Robinson; (ii) Defendant TMK/Hogan's controlling OCURA's executive director, Defendant Douglas, and her husband, inter alia, via the Second Century entity, sec Second Amended

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[§§§§§§§§§§§§§§§] The Hogan Brief states that it represents Defendants (1) Dan Randolph Hogan; (2) TMK/Hogan Joint Venture ("nka Commercial Real Estate Services Joint Venture"); (3) Hogan Property Management, L.L.C.; (4) Bricktown-TMK/Hogan Parking, L.L.C. ("nka Bricktown-SMC/Hogan, L.L.C."); (5) Bricktown-TMK/Hogan Entertainment, L.L.C. ("nka Bricktown Entertainment, L.L.C."): (6) Mark D. Elgin; (7) Stonegate Management Company. L.L.C.; (8) Elgin Development Company, L.L.C.; and (9) TDC Company, L.L.C.

Complaint ¶¶ 17, 80; (iii) Defendants' providing money and other things of value to

OCURA commissioners Hall. Tolbert and Nichols, and to Bricktown Association President Tolbert. via (a) Hall's 50% partnership in the East Wharf project, see id. 1 44; (b) the Hogans' release of the their Edmond lien on Hall's business, see id. ¶ 161; (c) Defendants' granting Tolbert and Hall shares in the Parking Agreement, see id. ¶ 71; (d) Defendants' management of Nichols' Mid-America building at below-market rent; and (e) Tolbert's appointment to his OCURA commissionership and as chairman of the Myriad Garden Trust. see id. ¶ 71; (iv) OCURA Commissioner Hall's providing $100,000.00 annually to Mayor Norick, see id. ¶ **61**; (v) Defendants favoring Mayor Humphreys' properties with public work improvement grants, see id. ¶ I 79(viii); and (vi) raising funds for and providing a Second Century post Councilman Liebmann and finding Councilman Schwartz Washington employment, in exchange for both Councilman's votes in favor of Defendants' project. sec id. **9** 161, 162. See generally id. ¶ 179. Defendants' financial support of, not only OCURA itself, but of OCURA's executive director, three of OCURA's commissioners, two City Mayors and two Council members clearly supports the Second Amended Complaint's 18 U.S.C. §1962(h) Cause of Action. See. e.g.. First Interregional Advisors v. Wolff, 956 F. Supp. 480, 487 (S.D.N.Y. 1997) (defendant acquires interest in or control of enterprise by financing continued operation); see generally Subsections "C" and "G", infra[gggggggggggggg].

This Court stated in the October 30, 2002:

> "I don't want to convert the motions to dismiss into motions for summary judgment. Motions to dismiss do have their own inherent limitations, with which we are

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[gggggggggggggg] The Amici Briefs reaction to Defendants' provision of OCURA with low rent is discussed in POINT "VIII", infra.

all very familiar. And in fact the standard to be applied on a 12(b)(6) motion to dismiss is a very stringent standard and very favorable to the party against whom the motion is made" (Oct. 30, 2002 Tr. at 6).

The Court went on October 30 to discuss its reasons for not wanting to move to summary judgment. Id. at 7. Defendants and Amici have all apparently deliberately violated the Court's directions in this regard. In all three of the documents responded to here, both Defendants and Amici have abundantly larded their presentations with factual representations and documents en dehors the well-pleaded facts in Plaintiffs' Second Amended Complaint which facts as has been seen in the Court's above-quoted direction, for the purposes of these motions must be taken as true. See, e.g. Grinder v. Texas Oil & Gas Corp., 868 F.2d 1147, 1148 (10th Cir. 1989). Moreover, as will be seen at Points "I" and "IV", infra, Defendants (Amici are particularly guilty of this also) have raised preclusion and limitations issues already decided by this Court October 30, 2002. In response, Plaintiffs herewith reassert their July 8, 2002 responses to Defendants' first, May 31, 2002 wave of dismissal motions herein.[ggggggggggggg]

For the Court's convenience Plaintiffs will respond to Defendants' various and sundry objections seriatim, in the general order presented by the nine-Defendant Hogan Brief.

I. THIS ACTION IS NOT BARRED BY ROOKER FELDMAN

Both the Hogan and Douglas Briefs reprise their persistent contention, made both in the State Courts and in the same parties' initial, May 31. 2002 dismissal motions herein, to the

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[ggggggggggggg] The Douglas Brief at 1, cites Rule 12(b)(6); the Hogan Brief, at 6, paraphrases it. With respect to Defendant Douglas' argument based on the Oklahoma Governmental Tort Claims Act, 51 O.S. §§ 151, et seq., Plaintiffs here rely solely on their July 8, 2002 response to said argument.

effect that prior Oklahoma Supreme Court decisions[ggggggggggggg] somehow bar the instant Complaint. This Court however clearly rejected this argument October 30, 2002. (Oct. *30* Tr., at 20). Defendants' motions in this respect thus violate the well-settled doctrine of the Law of the Case. This contention must therefore be rejected under the doctrine of the Law of the Case. Should this Court nevertheless determine to visit this issue yet once again, the Oklahoma Supreme Court in State ex rel. Moshe Tal and T.A.R. and MaryGaye LeBoeuf v. City of Oklahoma City et al., 2002 OK 97. 61 P.3d 234 (Okla. 2002). ("Tal IV") has now definitively spoken on this issue, and has categorically rejected Defendants' argument in this regard. Thus, the Tal TV Court clearly ruled that the Tal I trial court, relied on throughout Defendants' motions as deciding factual issues in a manner somehow precluding the instant Complaint, not only did not rule on all issues present herein, it quite arguably *did not rule on any issues at all,* stating (2002 OK 97, at ¶ 23):

> "Although, in essence, Tal I stated that the fact [that] all parties to the declaratory suit agreed on the lawfulness of the Agreements did not show the suit was collusive or fictitious, there can be no serious question City's declaratory suit was a friendly one because all parties to it disagreed with the claims made in the written demand and argued the lawfulness of the Agreements presented in that case. Because of the need to resolve speedily an issue of public importance, *there can aLvo he little question that Tal I relaxed the strict necessity of a true or a high level of adverseness normally required for there to be a justiciable live case or controversy*

[ggggggggggggg] City of Oklahoma City v. Oklahoma City Urban Renewal Authority v. Moshe Tal, et al. individually and as an association known as Taxpayers Against Ripoffs ("TAR."), 1999 OK 71, 988 P.2d 901 (Okla. 1999) C"Tal I") State ex rel. Tal and T.A.R. v. Norick. et al., 1999 OK 85, 991 P.2d 999 (1999) ("Tal II"); State of Oklahoma ex rel. Moshe Tal and T.A.R. v. City of Oklahoma City et al. 2000 OK 70, 19 P.2d 268 (2000) ("Tal III")

sufficient to invoke a court's authority to hear a dispute" (emphasis added; citations omitted).

Instead of advising this Court of the Oklahoma Supreme Court's holding in this, the Hogan Brief instead (at 6) flatly misrepresents it, stating: "In a recent collateral opinion, the Oklahoma Supreme Court reiterated that any public interest in fraud and irregularity related to the award of the Redevelopment Agreements has been litigated and is precluded from relitigation by Tal "I" (emphasis added). This assertion, moreover, contradicts not only the Oklahoma Supreme Court in Tal IV, the only parties held "precluded from relitigation" on issues raised in the Second Amended Complaint in Tal I, II and IV were the taxpayer group plaintiffs in those actions, and not Plaintiffs herein[gggggggggggggg]. Finally, the said taxpayer group was denied intervention in Tal I, see Hogan Brief, at 5, and was held precluded from further litigation of issues at bar in Tal III. Its claims were thus *never heard on the merits* by the State Court.

The Hogan Brief's reliance on the *Rooker Feldman* doctrine[gggggggggggggg] is thus simply inapposite herein. That

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[gggggggggggggg]The Hogan Brief tries mightily to overcome this result, asserting e.g.: "Plaintiff Bricktown-2000 in this case was part of the same 'group of investors who sought the contracts' referred to in the foregoing quote from Tal I"; "[t]he evidence considered by the [trial] court included 'Tal's 129-page deposition, in which he outlined all of his complaints concerning the allegedly invalid Redevelopment Agreements, the depositions of the other TAR members, and the taxpayers' Written Demand"; and "Tal I was a taxpayer representative suit, in which the city, acting as *parens patriae* on behalf of all its citizens, put the taxpayer challenges raised in the Written Demand before the Oklahoma County District Court". (Hogan Brief at 4-5). These observations are all inapposite at bar: The Tal IV Court held that that trial court did not hear a justiciable controversy.

[gggggggggggggg]*Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303 (1983).

doctrine deprives a federal district court of jurisdiction over claims "inextricably intertwined" with state court decisions affecting the same party plaintiffs[gggggggggggggg]. Defendants' own quotation (Hogan Brief at 10-11) from Justice Marshall's concurrence in Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 197 S.Ct. 1519 (1987) states: Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal court proceeding as, in substance, *anything other than a prohibited appeal of the state court judgment"*. Plaintiffs herein could never have appealed Tal I or III: They were never parties to those actions.

II. 18 U.S.C. §1962(b) APPLIES TO THIS ACTION

A. Plaintiffs' RICO Case Statement Is Fully Sufficient

A decision cited by the Hogan Brief itself (at page 12 thereof) supports Plaintiffs RICO Case Statement. Manning v. Steiger, 919 F. Supp. 249, 254 (E.D. Ky. 1996) is described by the Hogan Brief as requiring pleaded "facts to satisfy the RICO elements". Plaintiffs' RICO Case Statement explicitly incorporates by reference relevant allegations in Plaintiffs' Second Amended Complaint. Said Second Amended Complaint allegations clearly qualify as pleading the facts in question. See Glessner v. Kenny, 952 F.2d 702 (3d Cir. 1991) cited by Defendants themselves, 952 F.2d at 710.

The Douglas Brief, in this regard (at 16) merely cites several decisions authorizing a District Court to require, if necessary, "a

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[gggggggggggggg]* The Hogan Briefs various and sundry attempts to transform Plaintiff Bricktown-2000 (and other) *non-parties* into state court parties (in addition to the "same group of investors" gambit discussed immediately above) includes its arguments that Assuming, arguendo, these arguments to have validity, Defendants cannot gainsay the fact that Oklahoma Supreme Court in Tal IV ruled that that trial court proceedings did not rise to the level of a truly justiciable controversy.

more specific, clear and direct statement of a RICO claim", thereupon asserting, without further elaboration of any sort, that the Second Amended Complaint together with Plaintiffs' RICO Case Statement are somehow insufficient. As demonstrated herein, such conclusory assertions on Defendants' part are spurious in the extreme.

B. 18 U.S.C. §1962(b) Applies to Legitimate Business

The Hogan Brief claims (at 12) that "this case involves nothing more sinister than the selection of one developer over another". The Second Amended Complaint, as seen, portrays a much darker scenario. Neither H.J.. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 242 (1989), U.S. v. Porcelli, 865 F.2d 1352, 1362 (2d Cir. 1989); nor Alien v. New World Coffee, 2002 WL 432685 *2 (S.D.N.Y. Mar. 19, 2002), all of which are cited by the Hogan Brief, id., for the proposition that RICO is somehow restricted to "long-term criminal conduct" do anything to bar this action. The United States Supreme Court decided in Sedima, S.P.R.L. v. Imrex Co.. Inc., 473 U.S. 479, 488-90, 105 S.Ct. 3275 (1985) that one need have been neither convicted nor even charged with the commission of an underlying predicate act to be sued under RICO.

C. Plaintiffs Establish Acquisition Injury Under 18 U.S.C. §1962(b)

Defendants' domination of OCURA and the Council, resulting, inter alia. in Defendant's Hogan, Elgin. TMK/Hogan, Stonegate et al.'s fraudulent eviction of Plaintiffs from the MAPS Bricktown revival project clearly qualifies as "acquisition injury" within the meaning of Grider v. Texas Oil & Gas Corp., supra. The Hogan Brief here advances a purely formal argument that could not be more spurious, stating (at 13): "Plaintiffs' First Cause of Action does not state any such direct injury". This Cause of Action explicitly states no injury whatsoever. However, as is hornbook pleading practice, ¶ 185 of the Second Amended Complaint "repeat[s] and re-allege[s]"

the pleading's prior 184 paragraphs. While the Hogan Brief recognizes in this regard Second Amended Complaint ¶ 1 6 and 7. Defendants fail to reveal that ¶ 7's reference to "interference" with Plaintiffs' Bricktown project clearly states direct injury. Attempting thereafter simply to mislead this Court, Defendants further engage in a failed attempt to truncate the text of Plaintiffs' RICO Case Statement ~ 16, asserting (Hogan Brief, id., at 14):

> "Similarly. Plaintiffs' RICO Case Statement provides that '[b]y their racketeering activities' Defendants caused Plaintiffs' alleged injuries. See RICO Case St. ¶16. These alleged injuries relate solely to the predicate acts and do not state a claim under § 1962(h)".

Contrary to Defendants' assertions, Plaintiffs' RICO Case Statement, ¶ 16, describes the "alleged injuries" referred to by Defendants in the following precise regard, overwhelmingly demonstrating 'direct" injuries qualifying under 18 U.S.C. § 1962(b):

> "By their racketeering activities, the Defendants caused the Plaintiffs to lose their contracts with the City and by afterward rigging the public RFP bid, selecting and de-selecting Plaintiffs' CCBT team as co-developer of the East 26 Acres, resulted in the Plaintiffs' lose [sic] of more than $200 million combined of actual money invested in the projects and the projected profits and business opportunity, as more frilly described in Question 4(i) above[eeeeeeeeeeeeeeee]; Plaintiff TTT was

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[eeeeeeeeeeeeeeee]Plaintiffs' RICO Case Statement ¶ 4(i) stated, in pertinent part:

> Plaintiff. . . incurred loses including, but not limited to: (a) canceling the public offering which they previously filed with the SEC. and income anticipated to derive therefrom; (b) loss of actual investment of more than $500,000 in design and

injured in the amount of more than $7 million by both the theft by the Defendants of its canal-front property, which market value is more than $5 Million and increasing daily, and additional loss to its business venture with BT-2000's development plan in value of more than $2 Million. TTI was also injured and would continued to be injured by the decrease in value to its remaining property and other illegal activities of the Defendants as more fully described in Question 4(ii) above[gggggggggggggg]".

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operation cost; (c) loss of projected profit it anticipated from the development project in the amount of about $200 million; (d) damages to its credit and financing ability, reputation, and its ability to secure investors for other projects it planned and anticipated to carry on; (e) damaged its relationship with The Cordish Company and Mr. Cordish and severely damaged opportunities to engaged in other projects with lie Cordish Company; and, (f) loss of its lease to develop TTI canal-front properties and profit therefrom due to Defendants taking said canal-front properties by fraudulent condemnation".

[gggggggggggggg]Plaintiff's RICO Case Statement ¶ 4(ii) stated:

"Plaintiff TTI had a contract with BT-2000 where TTI's properties would be leased to BT-2000 to be used as part of its South Bricktown development. TTI was defrauded and damaged because (a) Defendants stole approximately 1.4 acres of TTI's canal-front property in value of about $7 Million; (b) Plaintiff lost lease income from BT-2000's South Bricktown development project; (e) loss of profit-sharing income from BT-2000's projects; (d) Plaintiff lost the stock value and stock options as part of it participation in the CCBT project; (e) Plaintiff incurred losses relating to decrease in TTI's property value (other than the condemned land); (1) Plaintiff incurred losses to its own business due to the Defendants' impact on TTI's cash-flow; (g)

Advocacy Organization for Patients and Providers Club Ins. Ass'n, 176 F.3d 315, 328-29 (6th Cir. 1999); Lightening Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1191 (3rd Cir.1993); and Compagnie de Reassurance D'Ile de France v. New England Reinsurance Corp., 57 F.3d 56, 92 (1st Cir. 1995), all cited by the Hogan Brief at page 13, and requiring, as described by the Hogan Brief itself, that "plaintiffs must allege they were injured 'by reason of' defendants' acquisition or maintenance of control of the enterprise"; "injury independent from that caused by the pattern of racketeering" and "harm beyond that resulting from the fraud which constituted the predicate act", are thus fully satisfied by Plaintiffs' RICO Case Statement.

Defendants themselves (Hogan Brief at 12) cite Glessner v. Kenny, supra, as holding that "Courts may consider the RICO case statements in assessing whether plaintiffs' RICO claims should be dismissed". Plaintiffs respectfully request this Court to adopt that precise suggested approach here[ggggggggggggg].

D. OCURA and Council Qualify As RICO Enterprises

Defendants only response to Plaintiffs' designation of OCURA and the Council as the 18 U.S.C. §1961(4) "enterprises" herein is to label the designation "conclusory" and to proffer a dismissive appreciation of Second Amended Complaint ¶ 182, which describes the enterprises' effect on interstate commerce, and to which this Court is respectfully referred in this regard. It is well-settled that legitimate businesses are the prototypical enterprises contemplated by the

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Defendants' related activities which restricted road excess and public services to TTI's remaining 3.5 acres on the south side of I-40; and (h) Plaintiff incurred other damages due to Defendants' continuous illegal activities, including, but not limited to extensive litigation costs".

[ggggggggggggg]With respect to Plaintiffs' claim for condemnation by fraud, referred to at Hogan Brief 14, see Point VII", infra.

RICO statute. See also, e.g. United States v. Parness, 503 F.2d 430 (2nd Cir. 1974) (hotel as enterprise); Bennet v. Berg, 685 F.2d 1053, 1060-61 (8th Cir. 1982) (retirement home); United States v. Hartley, 678 F.2d 966,988-90 (11th Cir. 1982) (seafood producer); United States v. Swiderski, 593 F.2d 1246, 1248-49 (D.C. Cir. 1978) (restaurant).

E. Defendants Control OCURA and the Council

Hogan Brief pages 15-16 again cites authorities supporting the Second Amended Complaint. Cadle v. Schultz, 779 F. Supp. 392, 397 (N.D. Tex. 1991); NCNB National Bank of North Carolina v. Tiller, 814 F.2d 931, 936 (4th Cir. 1987); Cincinnati Gas & Elec. Co. v. General Electric Co., 65 F. Supp. 49. 85 (S.D. Ohio 1986); Lightening Lube, supra and Greenberg v. Tomlin, 816 F. Supp. 1039 (ED. Pa. 1993), all of which are cited by the Hogan Brief at its page 15, require such control over the enterprise as Plaintiffs, at an absolute minimum, demonstrate respecting Defendants' iron grip over both OCURA and the Council. Defendants Hogan, Elgin, TMK/Hogan and Stonegate's *financing* of both Defendant Douglas and her husband and Councilman Liebmann via, inter alia, the Second Century entity clearly render Defendants culpable of "participating in the management" of the entity of which Defendant Douglas is executive director, and the acts charged against Defendant Douglas charged in the Second Amended Complaint demonstrate her working solely in Defendants' interest.

Defendants in this regard attempt to mislead this Court in the same manner as they have with respect to the "acquisition injury" requirement discussed in section "C" supra. Defendants thus intone (Hogan Brief, at 15-16):

> "Plaintiffs wholly fail to plead *how* each Defendant acquired control of OCURA *and* the City Council *through* the racketeering activity. Rather they simply parrot the language of the RICO statute ... Plaintiffs'

> RICO Case Statement does not state that Defendants acquired control of OCURA and the City Council through mail fraud, wire fraud or bribery, but instead it states that the alleged predicate acts "seal[ed] Defendants' control over both Urban Renewal and the City Council, by assuring that key members of OCURA and a majority of the City Council supported Defendants' fraudulent scheme.' RICO Case St. ¶5. The allegation that key members of OCURA and a majority of the City Council supported Defendants' redevelopment plan does not constitute evidence that Defendants' [sic] controlled OCURA and the City Council".

This statement is purely and simply Double Talk. The predicate acts in question, principally bribery, 18 U.S.C. §201. are set out in Second Amended Complaint Section **"X"**, which Section is explicitly incorporated by reference in Plaintiffs' RICO Case Statement ¶ 5. Again, the Court is respectfully referred to Glessner v. Kenny, supra.

F. Probable Cause to Indict Is Not the Relevant Standard

The Hogan Brief (at 16-17) here again misstates the law. The United States Supreme Court in Sedima. S.P.R.L. v. Imrex Co., Inc., supra, 473 U.S. 479, 491, stated: "We need not decide the standard of proof issue today". Lower courts thereafter have consistently held the standard to be preponderance of the evidence, and precisely not probable cause to indict, as erroneously stated by Defendants. See Liquid Air Corp. v. Rodgers, 834 F.2d 1297, 1302-03 (7th Cir. 1987). cert. denied, 109 S.Ct. 3241 (1989) (collecting eases). Talamante v. Roniero. 620 F.2d 784 (10th Cir. 1980) (prisoner habeas corpus); Silverthorne v. United States. 400 F.2d 627 (9th Cir. 1986); and Branzhurg v. Hayes. 408 U.S. 665, 688. 92 S,Ct. 2646, 2660 (1972) (reporter testimonial privilege; grand jury function), all of which are cited by the Hogan Brief (at page 16) in this regard,

relate to criminal prosecutions, evidently incorporating a standard inapplicable here.

Baehe Halsey Stuart Shields, Inc. v. Tracy, *558* F. Supp. 1042 (D. Utah,1983), also cited by the Hogan Defendants at this point in their Brief, should have given Defendants pause under Fed. R. Civ. P. 11. Bache Halsey is a pre-Sedima decision *explicitly disapproved* and finally recognized as "abrogated" -- post-Sedima, including by a case *cited by Defendants themselves.* Cincinnati Gas & Flee. Co. v. General Flee. Co., supra. 656 F. Supp. 49. at 76-78[gggggggggggggg].

The Hogan Brief (Note to page 17) also flatly misrepresents Second Amended Complaint ¶184, which, contrary to Defendants' assertion in this regard, explicitly invokes Defendants' acts of mail fraud in connection with their violation of 18 U.S.C. § 1962(b). Defendants thus are guilty both of citing the overruled Baehe Halsey in this regard and misrepresenting Second Amended Complaint ¶ 184.

F(i). Defendants Committed Mail and Wire Fraud

Defendants here demonstrate themselves hoist by their own petard, *i.e.*, the one set up in Subsection "C", supra, respecting "acquisition injury". Thus the Hogan Brief (at 17) here begins by stating accurately the law of wire and mail fraud, i.e., to the

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[gggggggggggggg]See also Tryeo Trucking Co., Inc. v. Belk Store Services, Inc., 608 F. Supp. 812 (W.D.N.C. *1985);* Haroco, Inc. v. American Nat. Bank and Trust Co. of Chicago, 747 F.2d 384, (7th Cir. 1984); Lewis on Behalf of Nat. Semiconductor Corp. v. Sporck, 612 F.Supp. 1316, (N.D.Cal. 1985); Rhoades v. Powell, 644 F. Supp. 645, (E.D.Cal. 1986); Meyer v. First Nat. Bank and Trust Co. of Dickinson, 698 F. Supp. 798 (D.N.D. 1987); Sehnitzer v. Oppenheimer & Co., 633 F. Supp. 92 (D. Or. 1985); Preway Inc. v. Touche Ross & Co.. 1986 WI. 69193 (W.D. Wis. Mar. 24, 1986) (recognizing that Haroco line of 7th Circuit cases had abrogated Baehe Halsey); Bums v. Ersek, 591 F. Supp. 837 (D.Minn. 1984).

effect that it requires (according to Defendants) (1) a scheme to defraud and (2) use of the mails or interstate wires in furtherance of the scheme. See United States v. Maze, 414 U.S. 395, 399, 405. 94 S. Ct. 645 (1974); see also United States v. Brown, 147 F.3d 477 (6th Cir. 1998), cited by Defendants to this precise effect. Koch v. Koch, 203 F.3d 1202, 1236 (10(11 Cir. 2000), cited by Defendants with respect to the requirement of a "complaint alleging fraud to set forth the time, the place and contents of the false representation, the identity of the party making the false statements and the consequences thereof", has been fully complied with, and Defendants, in actual fact, do not argue otherwise[eeeeeeeeeeeeeee].

The Hogan Briefs actual argument (at 20) is that Plaintiffs fail to allege their own reliance on Defendants' fraudulent 18 U.S.C. § 1341 mailings effectuating Defendants' Torchmark Misrepresentation. Here is where the "acquisition injury" fully demonstrated by Plaintiffs in Subsection "C", supra, fatally trips Defendants up. 18 U.S.C. § 1962(b), like 18 U.S.C. § 1962(a) focuses on Defendants' acquisition of interest in or control of the enterprise in question. See Under v. Texas Oil & Gas Corp., supra. 868 F.2d at 1149 (injury establishing cause of action is defendants' "use or invest[mentJ" of income previously derived from racketeering so as to acquire interest in or establish operation of enterprise, injury is not in initial receipt of income via racketeering).

There is thus no requirement, in their 18 U.S.C. § 1962(b) Cause of Action, that Plaintiffs prove injury caused by their direct reliance on Defendants' predicate acts of mail and wire fraud. See Advocacy Organization for Patients and Providers

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[eeeeeeeeeeeeeee] Atlantic Gypsum Co., Inc. v. Lloyd's Intc,nat'l Corp., 753 F. Supp. 505, 512 (S.D.N.Y. 1990), also cited by Hogan Brief page 18, involved mailings that were not only alleged with any particularity whatsoever but which were explicitly found by the Court, 753 S. Supp. at 512-13, to be not fraudulent. Such cannot be stated to be the case with respect to Defendants' mailings herein. See Second Amended Complaint ¶ 177.

Club Ins. Ass'n; Lightening Lube. Inc. v. Witco Corp. and Compagnic de Reassurance D'Ile de France v. New England Reinsuranee Corp., cited in Subsection "C", supra.

The further decisions cited by Defendants in this regard are thus completely inapposite herein. Sikes v. Teleline, Inc., 281 F.3d 1350, 1361 (11th Cir. 2002), cited by Defendants at page 18 of their Brief involved reliance on the defendant company's 900-number telephone solicitation line that was the direct result of the plaintiffs loss. The Sikes Court, noting that mail fi-aud requires solely "the use of the mails in furtherance of the scheme", held (281 F.2d at 1360): "When a civil RICO claim is predicated upon mail or wire fraud, the plaintiff must show that 'he was injured by reason of the defendant's acts of deception". Kenty v. Bank One. Columbus. N.A., 92 F.3d 384, 389-90 (6th~ Cir. 1996), cited by Hogan Brief page 19. is similar, involving purchasers of automobiles who sued the bank financing their purchases and the company insuring them, based on representations made by said defendants to the plaintiffs. Johnson Enterprises of Jacksonville. Inc. v. FPL Group, Inc., 162 F.3d 1290. 1317-18 (11th Cir. 1998), discussed at length by Hogan Brief page 19, involved claimed misrepresentations which the Court held, first, could only state a claim, if any, under 18 U.S.C. §1962(c) which, unlike 1962(a) and (b) - contemplates precisely *not* "acquisition injury" such as that charged against the Hogan Defendants herein, but instead *solely* direct racketeering injury. Second, the Johnson Court found that the claimed mail and wire fraud not only did not injure the plaintiff, they in point of actual fact *benefitted* it. 162 F.3d at 1318. Such cannot possibly he said to have occurred herein.

The Douglas Brief (at 21-24) argues the same reliance point as does the Hogan Brief, citing (id., at 24), inter alia, on Sunbird Air Services, Inc. v. Beechwood Aircraft Corp., 1992 WL 135021 *2 (D. Kan. May 29, 1992); Lightening Lube. Inc. v. Witco Corp., 4 F.3d 1153, 1190 (3d Cir. 1993); and Standard Chlorine of Delaware. Inc. v. Sinbaldi. 821 F. Supp. 232, 247 (D. Del. 1992) (D. Del. 1992), all of which are cited at Douglas

Brief 24, and all of which require the precise "acquisition injury" demonstrated herein. Indeed, Defendant quotes Standard Chlorine, supra, as holding: "Where a plaintiff's alleged injury results only from the predicate racketeering acts themselves, and not from the defendant's acquisition or control of an interest in the enterprise though a pattern of racketeering activity, a section 1962(b) claim cannot be sustained" (emphasis added)[eeeeeeeeeeeeeee].

The Hogan Brief finally, invokes Puller Mortgage Assoc., Inc. v. Keegan, 829 F. Supp. 1507 (S.D. Ind. 1993). Puller involved a claimed verbal misrepresentation found by the Court to express an opinion respecting "ownership" of land, which opinion the Court explicitly found, 829 F. Supp. at 1522, to have been contradicted by documents simultaneosely submitted by the defendant to the plaintiff. Stated the Puller Court: "False statements sufficient to sustain an action for fraud must relate to present or preexisting facts". Such is precisely what occurred at bar.

The Hogan Brief, in spurious reliance on Puller, claims (at 20): "Defendants' alleged characterization of TorChmark Corp. as their 'partner' or 'backer' was clearly a subjective description based on the corporate relationship between Torchmark Corp. and its wholly-owned subsidiary TDC whose wholly-owned subsidiary, Defendant SMC, owned 50% of Defendant TMK/Hogan". Second Amended Complaint ¶ 164 states:

"Defendant [sic] Torchmark Development Corporation. purchased from Torchmark by Defendants Elgin and Elgin Development Co. in 1999 did not own either Defendant Stonegate nor its predecessor Stonegate Management Corp. in 1996". The Hogan Brief thus (i) asserts a fact directly contradicting Second Amended Complaint ¶ 164, which fact,

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[eeeeeeeeeeeeeee] Cardwell v. Sears Roebuck & Co., 821 F. Supp. 406 (D.S.C. 1993); and Sadhigi v. Daghiffifekr, 36 F. Supp.2d 279 (D.S.C. 1999), both of which are cited at Douglas Brief page 22 in this regard, are similar.

pursuant to Fed. R. Civ. P. 12(b). Plaintiffs request this Court to exclude; and (ii) in doing so demonstrate precisely that Defendants misrepresented to Plaintiffs, OCURA and the Council precisely such a "false statement relating to present or preexisting facts" i.e., the supposed ownership of TMK/Hogan by Torchmark, as the Puller Court holds to qualify precisely as fraud.

The Douglas Brief (at 17-19), after citing Fed. R. Civ. P. 9(b) authorities such as Koch v. Koch, supra, on particularity, thereupon, like the Hogan Brief, completely drops the subject. It then summarizes in cryptic form the acts of mail fraud alleged against Defendant in Second Amended Complaint ¶ 177, thereupon summarily concluding (Douglas Brief at 19): "Plaintiffs have never alleged why or how any of the above[-]mentioned mailings were fraudulent". Plaintiffs have precisely so demonstrated[gggggggggggggg].

[gggggggggggggg]Defendant's March 17, 1997 letter consummated the first successful leg of Defendants' fraudulent Torchmark Misrepresentation, Second Amended Complaint ¶50; her March 24, 1997 letter began the second leg, id., ¶¶ 78-80; her June 26, 1997 letter to Moshe Tal induced Plaintiffs to participate in a process intended by Defendants, including Defendant Douglas, from the outset, to be a fraud and a sham. id. ¶114; her June 26, 1997 letter to Defendant Elgin facilitated Defendants' being chosen under the June 26. 1997 RFP; her July 17. 1997 letter to Plaintiffs had the same purpose as her June 26, 1996 letter to Tal; the fraudulent nature of Defendant's July 23, 1997 letter to Plaintiffs is explained id., at ¶105; her July 28. 1997 letter to Defendant Elgin served the same purpose as Defendant's June 26, 1997 letter to him; her July 28, 1997 letter to Cordish and August 4, and August 13, 1997. January 26. 1998 letters to Plaintiffs served the same purpose as her July 17, 1997 letter to them. see id., ¶ 118; her May 21, June 14, July 15 July 21, 1998 letters; August 28, 2001 and May 21 and August 1, 2002 letters to Defendant Elgin both consummated the second leg and commenced the third leg of Defendants' fraudulent Torchmark Misrepresentation. Finally, Defendant's July 21, 2000 letter to the City Manager facilitated Defendants' fraud by asserting that their

With respect to Plaintiffs' 18 U.S.C. §1343 wire fraud allegations. the Douglas Brief (at 20) further attempts to mislead the Court, asserting: "Plaintiffs have only alleged two actions that even crossed state lines - the June 26 and 28, 1998, [sic] facsimiles sent to Cordish in Maryland". Defendant here contradicts both the law and the Second Amended Complaint. First, Defendant's August 1, 1997 delivery of the documents in support of Defendants previously transmitted to her by facsimile, id. ¶178(ix)(a), qualifies as use of the wires; a defendant need not have directly participated in the transmission in question to be guilty of the crime, but only have reasonably foreseen the use of the transmission. U.S. v. Maze, supra, 414 U.S. 399. 405, 94 S.Ct. 645. Second, Defendant entirely omits from her presentation Second Amended Complaint ¶178(x)(g)[eeeeeeeeeeeeeee], a particularly crucial act of wire fraud, which the Court can readily infer included both Defendant Douglas in Oklahoma and Defendant Elgin in Alabama.

With respect to Defendant Douglas' June 26, 1998 facsimile to David Cordish inviting him to Oklahoma and June 28, 1998 facsimile canceling her said invitation which transmissions Defendant concedes were interstate: Defendant May 20, 1998 sent further and additional facsimile to Cordish in Baltimore, stating that OCURA would vo the next day, May 21. 1998, on its resolution canceling CCBT's prior designation as c developer and granting the entire project to Defendants. Second Amended Complaint ¶135. This May 20, 1998 facsimile clearly served Defendants' fraud by providing colorable claim of legitimacy to the May 21, 1998 OCURA vote. Defendant's June 2i 1998

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theater complex would be built. when in fact it was never built. Id., ¶151. Said series of mailings in support of Defendants' fraud fully qualifies as satisfying 18 U.S.C. § 1341. U.S. v. Maze, supra.

eeeeeeeeeeeeeee Between May 11, 1998 and May 18, 1998, Defendants Hogan, Elgin and Douglas held numerous telephone conversations among themselves, and with Mr. Tolbert and others planning the Scheme whereby Tolbert will mail the May 18, 1998 letter described in ¶13 of the Second Amended Complaint to City officials".

facsimile may he seen in the same light: as a means to provide OCURA colorable legitimacy by appearing to hear all sides. Defendant's June 28, 1998 facsimile to Cordish on a Sunday, Second Amended Complaint, ¶178(x)(k). appears solely designed to damage Plaintiffs, thus supporting the "specific intent to monopolize" required under I U.S.C. §22, et seq. See Point "III(C)", infra.

Contrary to the Douglas Brief's assertion (at page 25). Plaintiffs have thus definitely "allege[d] two predicate acts which Douglas committed", and have therefore similarly demonstrated ~a violation of [18 U.S.C.] § 1962(c) by Douglas".

F(ii) Defendants Possessed Specific Intent to Bribe Under State Law

The Hogan Brief (at 21-23) and Douglas Brief (at 21) argue that Defendants are not liable under 18 U.S.C. §201, invoked both at Second Amended Complaint ¶ 179 and RICO Case Statement ¶ 5. Plaintiffs concede this point; however, the matter does not end here. 18 U.S.C. § 1961 includes in the definition of "racketeering activity", inter alia, "any act involving bribery .. which is chargeable under State law and punishable by imprisonment for more than one year". 21 Okl. Stat. §381, "Bribing officers" covers essentially the same type of conduct covered by 18 U.S.C. § 201[ggggggggggggggg].

[ggggggggggggggg] this statute states, in pertinent part:

> Whoever corruptly gives, offers, or promises to any executive, legislative, county, municipal, judicial, or other public officer, or any employee of the State of Oklahoma or any political subdivision thereof, including peace officers and any other law enforcement officer, or any person assuming to act as such officer, after his election or appointment, either before or after he has qualified or has taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision, or

The Douglas Brief (at 23) spuriously argues with respect to Defendants' bribery of public officials: "It is readily apparent that if the mayor, Nichols and Liebmann were bribed, the injuries would flow to the Oklahoma City Taxpayers and public at large. Plaintiffs would merely be a third part~ harmed by such action". Plaintiffs were the *primary targets* of the bribery in question, not mere bystanders caught in a cross-fire aimed initially at Oklahoma City taxpayers[ggggggggggggggg].

The decisions cited by the Hogan Defendants in this regard (Defendant Douglas, other than the spurious thesis just discussed, asserts solely the 18 U.S.C. §201 point) thus fully support the Second Amended Complaint. United States v. Johnson, 621 F.2d 1073, 1076 (10th Cir. 1980). cited by page 22 of the Hogan Brief states that the "corrupt intent" required by 18 U.S.C. § 201 was fulfilled by a showing "that the money was knowingly offered with the intent and expectation that, in exchange for the money, some act of a public official would be influenced". This is precisely what motivated Defendants Hogan, Elgin, TMK/Hogan and Stonegate to underwrite OCURA. its Commissioners. OCURA's executive director. Defendant Douglas; and Council members Liebmann and Schwartz; the precise "intent and expectation" that OCURA and the Council would approve TMK/Hogan's Bricktown proposal and reject Plaintiffs' manifestly superior one[ggggggggggggggg]. United

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> judgment on any matter, question, cause, or proceeding which then may be pending, or may by law come or be brought before him in his official capacity, or as a consideration for any speech, work, or service in connection therewith, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding five (5) years.

[ggggggggggggggg]Defendant Douglas thus argues that Plaintiffs have not demonstrated themselves to be primary victims herein. while the Hogan Brief, see Point "III(A)", infra.

[ggggggggggggggg]The Hogan Briefs spurious description (at page 23) of Second Amended Complaint ¶ 179 as offering a "bare statement ... that 'Defendants gave things of value to public officials in order to influence said officials" again attempts to

States v. Hsieh Hui Mei Chen, 754 F.2d 817, 822 (9th Cir. 1985), also cited by the Hogan Brief at its page 23, is similar to U.S. v Johnson. United States v. Revis, 22 F. Supp.2d 1242 (N.D. Okla. 1998) also cited by the Hogan Brief, id.. and is thus completely inapposite herein, involving the practice of promises of leniency in criminal cases.

Defendants' "corrupt intent" as seen in the Second Amended Complaint thus fully satisfies 18 U.S.C. §1961. See, e.g., U.S. v. Caporale, 806 F.2d 1487, cert. denied, 197 S.Ct. 3191, cert. denied, 197 S.Ct. 3265 (11th Cir. 1986) (payment by union members in exchange for kickbacks from health care providers); U.S. v. Colacurcio, 659 F.2d 684, cert. denied, 102 S.Ct. 1635 (5th Cir. 1981) (transfer of bribery money to undercover officer); Banker's Trust Co. v. Feldesman, 676 F. Supp. 496 (S.D.N.Y. 1987), rev'd on other grounds, 859 F.2d 1096, cert. denied, 109 S.Ct. 1642, cert. denied, 109 S.Ct. 1643 (corporate officers' bribing of state court judge); City of New York v. Joseph L. Balkan, Inc., 656 F. Supp. 536 (E.D.N.Y. 1987) (contractors' conspiracy to pay bribes to corrupt sewer inspectors); Temple University v. Salla Bros. Inc., 65 F. Supp. 97 (E.D.Pa. 1976) (suppliers conferring benefits on university employees in exchange for university contracts); Allstate Ins. Co. v. A.M. Pugh Assoc., Inc., 604 F. Supp. 85 (M.D. Pa. 1984) (bribing of surety company's employees by majority shareholder of entity required to perform).

G. Defendants' Pattern of Racketeering Activity

One of the country's leading cases on the determinative factors in finding the requisite pattern of racketeering activity is the Tenth Circuit's decision in Resolution Trust Corp. v. Stone, 998 F.2d 1534. 1542-45 (9th Cir. 1993). The Tenth Circuit thus stated therein (998 F.2d at 1542):

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mislead this Court. Second Amended Complaint ¶ 179 offers far more than that

> The Supreme Court has elaborated on RICO'S limited definition of the 'pattern' element. Although proof of at least two predicate racketeering acts are necessary to prove a patter. that may not be sufficient. The Supreme Court has concluded that Congress intended that the pattern element 'requires the showing of a relationship between the predicates. . . . and the threat of continuing activity' -- that is, - *continuity plus relationship.*' Only the continuity prong of the pattern element is at issue in this case. Continuity' is both a closed- and open-ended concept: closed-end referring to a closed period of repeated conduct and open-ended referring to conduct that by its nature projects into the future with a threat of repetition. A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time" (citations omitted; emphasis in original).

The Second Amended Complaint, at an absolute minimum, clearly establishes closed-end continuity under Resolution Trust. The "East Wharf" fraud alleged in Second Amended Complaint ¶¶ 171-76 carried out by Defendants Hogan and Hogan Property commenced in or about December 1992 and continued at least through in or about June 1999 (the Hogan Briefs reaction to the Second Amended Complaint's East Wharf allegations is discussed at page 35, infra). The "Torchmark Misrepresentation", Bricktown development fraud carried out by all defendants herein extended from in or about January 1996 through at least August 2002. Sec Second Amended Complaint ¶1J 35, 1 70. Resolution Trust found eighteen months to be a sufficient duration, 998 F.2d at 1544; here, for Defendants Hogan and Hogan Property the period is ten years; for the remaining defendants the period is at a minimum six years.

The Resolution Trust Court additionally listed the factors to be considered in evaluating "open-ended continuity", while noting, 998 F.2d 1543, Note 9: "We do not suggest that any of

these factors must be present in order to find continuity. Rather, they merely provide indicia by which the continuity of specified racketeering activity may be judged". The Resolution Trust factors thus include (i) duration; (ii) number of victims of the scheme; (iii) number and variety of racketeering acts; (iv) injuries suffered by the victims; (v) complexity and size of the scheme; and (vi) nature of the scheme.

Here, (i) duration has just been discussed; (ii) the number of victims, other than Plaintiffs, includes the competing developer the Sooners, see Second Amended Complaint ¶ 49; and the citizens of Oklahoma City, see Point "111(A), infra; (iii) With respect to the number and variety of racketeering acts, the Hogan Brief itself (at Note 5 to its page 18[ggggggggggggggg]) totals forty-six acts of mail fraud. Defendants however entirely omit the predicate acts of bribery listed in Second Amended Complaint ¶179. There are ten of these, several of which — ¶179(i), (iii), (v), (vi), (vii), (viii) and (ix) are of a continuing nature. With respect to Resolution Trust factor (iv), the injuries suffered by the victims see Subsection "II(C)", supra.

With respect to factor (v), the complexity and size of the scheme, the Court need only examine Defendants' Torchmark Misrepresentation. As seen at page 20, supra, Defendants' spurious factual assertion, contradicting Second Amended Complaint ¶ 164, is that there was a supposed "corporate relationship between Torchmark Corp. and its wholly-owned subsidiary TDC whose wholly-owned subsidiary, Defendant

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[ggggggggggggggg]The Hogan Brief there makes the spurious argument that because thirty-two of the said forty-six acts of mail fraud "occurred after OCURA initially selected Defendants to redevelop the East 26 Acres in July 1997. Clearly, none of those mailings could have caused Defendants to acquire control of OCURA and the City Council for purposes of obtaining the right to redevelop the West 25 Acres". This argument ignores that gaining control of OCURA and the City Council for the East 26 Acres, inter alia, was the first step in solidifying said control for purposes of the West 25 Acres.

SMC, owned 50% of Defendant TMK/Hogan". This (evidently spurious) factual assertion flatly contradicts Plaintiffs' Exhibit "K", a document presented to this Court in Plaintiffs' July 8, 2002 Consolidated Exhibits to All Responses and Objections to All of Defendants' Motions to Dismiss, which document emanated from Defendants themselves. It is a "Partnership Fictitious Name Certificate of TMK/Hogan Joint Venture", filed with the Oklahoma Secretary of State February 16, 2000. This certificate states that as of January 1, 1996 the partners of Defendant TMK/Hogan were Defendant Hogan Property Management and Stonegate Management Corporation, and as of November 24, 1999Defendants Hogan Property Management and Stonegate Management Co. L.L.C.

Astoundingly, the Hogan Brief flies with this Court its Exhibit "F", a purported "Fictitious Name Certificate of TMK/Hogan Joint Venture", filed, not with the Oklahoma Secretary of State, but instead with the Oklahoma County Clerk, on January 12, 1996. This document, listing the two partners of Defendant TMKlHogan, as of that January 1996 date, as Defendant Hogan Property Management and *Torchmark Development Corporation,* thus contradicts *both* the Hogan Brief and Plaintiffs' Exhibit '-K".

Further complexity appears in Defendants' presentation of the purported Torchmark relationship to Oklahoma City authorities. Defendant Douglas' June 2, 2000 letter to City Manager Glenn Deck, quoted in Second Amended Complaint ¶ 163, thus follows the Hogan Brief line of Torchmark-TDC-Stonegate-TMK/Hogan, but muddies considerably the purported personal roles therein of Defendants Hogan and Elgin and former Torchmark Chairman R.K. Richey[gggggggggggggg].

[gggggggggggggg]Defendant Douglas thus June 2, 2000 asserted that (i) "prior to" Torchmark's sale of Torchmark Development Corp. to Defendant Elgin Development Co. in September 1999, Defendant Elgin was executive vice president and chief operating officer of Torchmark Development Corp., and president and chief operating officer of Stonegate Management Corp. Defendant

The final Resolution Trust factor is "the nature of the scheme". Defendants have monopolized for their own personal use and profit two entities set up by the legislature of this State to serve the public interest. The length and breadth of their involvement gives every indication that they intend to continue these activities for their natural lives. There is thus without the slightest possible doubt "open-ended continuity" herein, within the meaning of Resolution Trust, supra.

The Hogan Brief in this regard (at 25-26) simply resorts once again both to verbal sleight of hand and to misrepresenting the Second Amended Complaint. Defendants thus (Brief, at 25) indulge in various misleading statements worthy of the Trial Scene in "Alice in Wonderland", respecting Defendants Hogan Property, Stonegate, TDC, Hogan Entertainment and Hogan Parking, in order to arrive at the entirely spurious conclusion:

"[T]he First Count should be dismissed as to each of these Defendants because no reasonable person could conclude that they could be indicted for mail fraud, wire fraud or bribery, and there can be no aider and abettor liability under § 1962(b)".

This Court has seen, first, that "probable cause to indict" is not the relevant legal standard. See Subsection "F", supra. Second, the Hogan Brief's contention that none of these said Defendants has been alleged to have committed either mail fraud, wire fraud or bribery again simply attempts to mislead this Court*. Defendants further concede in this regard (Hogan Brief, id.) "Defendants TDC and Hogan Parking are alleged to

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Douglas further asserts: "Subsequent to" the said transfer — and "continuing thereafter as Torchmark Development Corp. and Stonegate Management Corp. were converted for tax purposes to limited liability companies" — Defendant Elgin purportedly "continued as sole manager of [Defendant] Elgin Development Company and he and R.K. Richey", the former chairman of Torchmark Corporation, "continued to own a majority of the ownership interests". Defendant Douglas' letter explained neither which "ownership interests" she was referring to, nor how Mr. Richey acquired any of them.

have bribed only OCURA Commissioners Hall and Tolbert by 'causing' OKC Athletic and BAP, respectively, to each become a 1/3 partner in the Parking Agreement" (emphasis added). Defendants here apparently contend that the Second Amended Complaint should be dismissed because they "only" bribed two OCURA Commissioners. Such contentions should have no place in this Court. The Hogan Brief (at 25-26) further feebly claims that Defendants Hogan's and Elgin's numerous mail and wire transfers to each other, in deliberate and blatant furtherance of Defendants' fraudulent Torchmark scheme, somehow represented nothing more than "conduct[ing] a real estate business in Oklahoma City". This assertion is simply too spurious to require any response.

The Hogan Briefs penultimate assertions in the continuity regard relate to the "East Wharf' project, see Second Amended Complaint, ¶¶ 171-76. Defendants here again mislead the Court, asserting, inter alia (Hogan Brief, at 26): "[T]he 'East Wharf Fraud' ... does not in any way involve the alleged RICO enterprises as they are defined by Plaintiff [sic]" (emphasis added). Second Amended Complaint ¶ 176 clearly and explicitly states that Defendant Hogan defrauded the City Council in East Wharf Plaintiffs designated the Council as a RICO "enterprise" in Second Amended Complaint ¶ 2. Defendants' further cavalier contention in this regard (Hogan Brief, id), to the effect that "the 'East Wharf Fraud' and Sooner Investment allegations do not meet the standards for pleading fraud under RICO as detailed above" is flatly contradicted by, inter alia, Second Amended Complaint ¶¶ 49 and 171-76[ggggggggggggggg].

[ggggggggggggggg]Defendants' final spurious claim in this regard (Hogan Brief, id.) is that because their bribery of public officials only extended "at most" from January 1996 to July 1998, "and were made in support of a single scheme", Plaintiffs' 18 U.S.C. § 1926(a) claim must somehow be "disregarded". Not only did Plaintiffs in actual fact allege that the bribery extended "through ... early ... 2001", Second Amended Complaint, ¶ 179(x), the Tenth Circuit held in Resolution Trust, supra, 998 F.2d at 1544, that an eighteen-month scheme satisfied the RICO "pattern" requirement.

H. Plaintiffs' S iently Plead 18 U.S.C. §192(d) Conspiracy

The Hogan Brief argues (at its page 26) that the Second Amended Complaint somehow fails to demonstrate that "the supposed conspirators agreed to the basic contours of the criminal activity". Defendants here rely on United States v. Felix, 503 U.S. 378, 389-90 (1992); and United States v. Bayer, 331 U.S. 532, 542 (1947). Felix is completely inapposite, dealing solely with double jeopardy for the crime and conspiracy to commit the crime; Bayer is similar, the Court stating (331 U.S. at 542): "Its [the crime of conspiracy] essence is in the agreement or confederation to commit a crime, and that is what is punishable as a conspiracy, if any overt act is taken in pursuit of it". Here, OCURA's establishment of itself as Defendants' own tenant, at below-market rent, followed by OCURA's executive director, Defendant Douglas, cooperating at every step of the way with the remaining Defendants in furthering, via the mail fraud, wire fraud and bribery alleged in the Second Amended Complaint, inter alia their fraudulent Torchmark Misrepresentation, resulting in Defendants' obtaining the lucrative Parking, Redevelopment. Bass Pro and East Wharf contracts, clearly permits the inference, available to Plaintiffs on the within motion, that such behavior occurred according to the Defendants' agreement among themselves. See, e.g., Peifresne v. Stephens, 35 F.Supp. 2d 1064, 1077 (N.D. Ill. 1999)

III. DEFENDANTS VIOLATED THE SHERMAN ACT

A. Plaintiff Bricktown 2000's Public Claim

The Hogan Brief, in reliance on Reiter v. Sonotone Corp., 442 U.S. 330, 99 S.Ct. 23(1979); Brown Shoe Co. v. United States, 370 U.S. 294, 82 S.Ct. 1502 (1962); and Shotkin v. General Electric Co., 171 F.2d 236, 239 ($_{10}$th Cir. 1948), asserts that the Second Amended Complaint 'is devoid of the essential allegations of *public harm* necessary to state an antitrust claim" (Hogan Brief, at 28; emphasis in original). Once again, however,

the Hogan Brief simply attempts to mislead this Court respecting the allegations of the Second Amended Complaint.

Thus, Second Amended Complaint ¶¶ 167-70 reveal Defendants' virtual rape of the Oklahoma City public purse in respect of the Bricktown Bass Pro contract, to the extent of approximately $22.5 million in public MAPS funds[ggggggggggggggg]. Defendants' East Wharf Fraud, see Second Amended Complaint ¶ 176, resulted in a further looting of the City's public purse to the extent of a further minimal $500,000.00. Defendants' claim of "no public harm" thus rings more than a little hollow. The Hogan Briefs remaining tack herein (at 29-31) is to once again raise their never-ending Tal I, II and III preclusion argument, which argument, as seen in Point I, supra, was put definitively to rest in Tal IV.

[ggggggggggggggg]Those paragraphs of the Second Amended Complaint state that the City "will finance the $18 million [Bass Pro] contract and lease the Bass Pro property back to Bass Pro at a below-market rent"; "the City will pay $18 million in MAPS and other public funds to construct the Bass Pro shop. Pursuant to said contract the City will also provide $250,000.00 to Defendant TMK/Hogan"; "the City under the Bass Pro contract, as modified, further agreed to 'replace' ... temporary parking facilities by donating to [OCURA Commissioners Fred Jones Hall and James Tolbert. Defendant TMK/Hogan and BAP. an entity whose partners include Bricktown property owners Don Karchmer and Jim D. Brewer] a new and additional property on Bricktown's north side. These aforesaid individuals and entities will now have the income from approximately 2.600 parking spaces in exchange for an annual rental of $1,000.00"; on August 4, 2002 OCURA approved a reduction in Defendant TMK/Hogan's offer to pay the City approximately $3.3 million for 31.45 acres or $2.4 million for the City-owned West 25 acres, and that the City would pay for approximately $3 million in improvements to Defendants' Bricktown facilities. The OCURA-approved reduction reduced Defendant's payment obligation from $2.4 million to $1.95 million as the price for the City-owned West 25 Acres; and increased the City's contribution to Defendant's project from $3 million to $4 million".

B. Relevant Channels of Interstate Commerce

This Court's October 30, 2002 Orders herein included the direction that Plainti Bricktown 2000, in order to support its Sherman Act claims, plead "the relevant channe of interstate commerce". Second Amended Complaint ¶196 identifies the said channels U.S. Interstate 40, U.S. Interstate 35, known as the "NAFTA Corridor", described "perhaps the most widely used North-South Interstate in the United States"; if Centennial Expressway. I-235; and the Canadian River. Furthermore, The Cordish Company, which demonstrated its commitment to invest $200 Million in the Bricktown project. is headquartered in Maryland. Its investment would inevitably have impaete interstate commerce, particularly via CCBT's Development plan's extensive urban redevelopment, see Second Amended Complaint ¶ 89. which in turn would have generated extensive out-of-state business and tourism. Plaintiffs also cancelled the public offering, see id. ¶ 29. additionally affecting the national securities market.

Mishler v. St. Anthony's Hospital Systems, 694 F.2d 1225, 1227-28 (10th Cir. 1981), cited by the Hogan Brief (at 31) in support of its claim that Plaintiff Bricktown 2000 has failed to comply with the Court's Order in this regard, in point of actual fa states (694 F.2d at 1227) the exact contrary:

> "A federal court has jurisdiction under the Sherman Act if the plaintiff establishes either that the challenged activity occurs within the flow of interstate commerce or that the activity, although wholly local in nature, substantially affects interstate commerce . At the pleading stage, Dr. Crane's allegations were sufficient because we could not say beyond doubt that he could 'prove no set of facts to show the required effect on interstate commerce" (citations omitted)

The Hogan Brief, moreover, simply snipes at the Second Amended Complaint thi regard, again attempting to misl̨ead this

Court by asserting: "Plaintiffs sole avermen with respect to channels of commerce is that the project it sought to develop is loeatei near the intersection of two highways". Defendants here reduce two United State Interstates, the Centennial Expressway, and the Canadian River to a provincia intersection a La the one in "North by Northwest". The Hogan Brief additionall maintains: "Likewise, Plaintiff must identify a relevant market", citing in this regar Walker Process Food v. Ford Mach. & Chem. Corp., 382 U.S. 172, 177 (1965), decision with little if any relevance herein. Tn fact, Plaintiffs' RICO Case Statement, ii conjunction with Second Amended Complaint ¶ 196, clearly identifies the relevan markets: architectural design, building trades and construction, and the securities markets Additionally, Bricktown 2000's project, deliberately destroyed by Defendants, see Subsection immediately following, aimed at increasing the hotel, high-end retail entertainment and tourism sectors in Bricktown. See Second Amended Complaint ¶ 89.

C. Defendants' Specific Intent to Monopolize

Hogan Brief 31-32 argues with a straight face thai Defendants' intent herein wa entirely benign, to conduct business in Bricktown, and never *"destroy[]* one' competition or build[] a monopoly". Yet again Defendants would have this Court ignor the Second Amended Complaint, here its ¶190 (x), referring to Defendants' "willful[] anc malicious[] use[of] their position and influence to cause news stories to be broadcast anc printed in newspapers, which contained information that was defamatory and false and/o inaccurate about the Plaintiffs and the CCBT team, especially against Plaintiff Tal, to gain public support for TMK/Hogan's development from City officials and the public". See also Defendant Douglas' June 28, 1998 facsimile to Cordish, on June 28. 1998 a Sunday, canceling his visit to Oklahoma scheduled by the same Defendant two days previously, discussed at page 1 9, supra. Similarly, Defendants' fraudulent acquisition of interest in and eontrol over OCURA and the Council cannot by any stretch of the imagination appropriately be qualified as "a legitimate business aim", nor as

a simple "attempt to obtain the development rights to South Bricktown", as the Hogan Brief (at 31-32) would have this Court believe.

D. Defendants Are Not Immune From Liability

The Hogan Brief (at 32-36), in reliance on City of Columbia v. OMNI Outdoor Advertising, Inc., 499 U.S. 365. ill S.Ct. 1344 (1991); BE&K Const. V. N.L.R.B. 122 S.Ct. 2390 (2002); and Ohendorf v. City and County of Denver, 900 F.2d 1434 (10tI~ Cir.), eert denied, 498 U.S. 845 (1990), attempts to argue to this Court that Defendants' mail fraud and bribery of three OCURA Commissioners, two City Councilmen and two City Mayors equates with the "string of public hearings and meetings" in Omni: the meetings with City Council members in Obendorf and the "effort to influence public officials" in BE&K. Defendants did not lobby public officials; they paid OCURA's rent and bought its Commissioners, current and former Mayor and Councilman.

The Douglas Brief advances an additional immunity argument based on Omni, and Oberdorf, supra, and on Parker v. Brown, 317 U.S. 431 (1943); Allright Colorado. Inc. v. City and County of Denver, 937 F.2d 1502, 1506 (10th Cir. 1991); as well as on 11 OS. §§ 38-101. The Douglas Brief also invokes (at 12) the Brief of Amici City Council and OCURA herein ("Amici Brief")[ggggggggggggggg] in this regard, arguing: "the Urban Renewal statue do not provide for 'public bidding". The

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[ggggggggggggggg] See also Amici Brief. Exhibit "B", the July 28, 1997 OCURA Resolution referred to in Second Amended Complaint ¶ 112, the third "Wherefore" clause of which also states that OCURA is acting as the Council's agent. The fact that Council had to approve show this. This June 24, 1997 document demonstrates conclusively that OCURA couldn't possibly have acted under 11 O.S. §§ 38-101, as Defendant Douglas. Amici (and the Hogan Brief, at one isolated, unsupported point) all spuriously claim. For discussion o the Brief of Amici, see Section "viii", infra.

Douglas Brief thus claims a "state action exception for both Defendant and OCURA, see Douglas Brief, Note to page 8, granting "exempt[ion] from the operation of the antitrust laws", so that, claims Defendant, these authorities "not only contemplate, but actually authorize, OCURA (and hence Douglas) to conduct the activities which Plaintiffs seek to categorize as wrongful"

The problem with Defendant's assertion in this regard is that OCURA, in this instant case, was not acting pursuant to OS. § 38-101, but instead precisely according to 61 O.S. §§ 101 et seq., the Oklahoma Public Buildings and Public Works Public Competitive Bidding Act of 1974 ("Public Bidding Act"). This is because OCURA in the Bricktown MAPS project was acting not in its own right and stead but instead as the City's appointed agent. See Hogan Exhibit "A," Exhibit "A" thereto, at pages 2, 7 9 and 10, stating clearly that OCURA in the MAPS area is acting "on behalf of the City o Oklahoma City";[eeeeeeeeeeeeeee].

Furthermore, 61 O.S. § 102 (Public Competitive bidding Act) includes any "public improvements" to publicly owned property. 61 O.S. § 102(7) define "public improvements" as follows:

> " 7. "Public improvement" means any beneficial or valuable change or addition, **betterment, enhancement** or amelioration of or upon any real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or to adapt it to new or further purposes."

Here, the July 17, 1997 RFP was for the purpose of developing and enhancing the City's and Urban Renewal's

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[eeeeeeeeeeeeeee]The Douglas Briefs further reliance (at its pages 10-12), in this regard. on the Oklahoma Supreme Court's decision in Tal I is particularly inappropriate; that same Court in Tal IV noted that the statements occupying a full page of Defendant's brief were entirely dicta.

properties (both public entities), and thus, the selection process and the award of the Redevelopment contracts falls into the 61 O.S. § 102 Public Competitive bidding Act's requirements.

IV. PLAINTIFFS HAVE STANDING TO ASSERT TORTIOUS INTERFERENCE

Defendants (Hogan Brief, 36-37) advance a wholly spurious argument attempting to deprive both Plaintiffs of standing, but ending up again simply misrepresenting Plaintiffs' pleadings. Thus, while Mayor Norick did state that the April 1996 Contract would be suspended pending the public RFP, Mayor Noriek made numerous representations (all of which are omitted from Defendants' presentation) guaranteeing that Plaintiffs would participate in the project despite the 1996 RFP. See, e.g., Second Amended Complaint ¶ 66.

Defendants' further arguments in this regard, to the effect that because CCBT was the partnership whose rights were violated by Defendants, "Bricktown 2000 has no standing to bring a tortious interference claim" is simply sanctionable. One of CCBT's two partners is Bricktown 2000, completely authorized to represent the partnership. Second Amended Complaint, ¶ 52. Plaintiff TTI's standing in this regard has been demonstrated at page 10. supra.

V. PLAINTIFFS TORTIOUS INTERFERENCE CLAIM IS NOT BARRED BY LIMITATIONS

The Hogan Brief (at 37-38) argues that Plaintiffs' claim for tortious interference with business relations is barred by a two-year limitations rule. Defendants here again violate the Law of the Case Doctrine; this Court *explicitly denied* this defense October 30, 2002. (Oct. 30 Tr., at 19). To the extent that the Court is inclined once again to visit this issue, Plaintiffs hereby respectfully refer the Court to Plaintiffs' July 8, 2002 response

to the Hogan Group's initial May, 31, 2002 dismissal motion. Defendants' May 31, 2002 dismissal motion (at 23) is substantially the same as Hogan Brief 37-38.

VI. PLAINTIFFS WERE INJURED IN THEIR BUSINESS

The Hogan Brief (at 38-39), in reliance on Gaylord Entertainment Co. v. Thompson, 958 P.2d 128, 143. (Okla. 1998); Cardtoons, L.C. v. Major League Baseball Players Assn., 208 F.2d 885, 889-90 (10th Cir. 2000); Protect Our Mountain Environment, Inc. v. District Court, 677 P.2d 1361, 1369 (Colo 1984); and Rudoff v. Huntington Symphony Orchestra, 397 N.Y.S2d 863 (N.Y. Supp. 1977), dredges up what it itself terms "the doctrinal counterpart to the *Noer-Pennington* immunity applied in the antitrust context", which immunity has been demonstrated definitively inapplicable to Defendants in Subsection III(D), supra. Once again, Defendants' own Brief demonstrates the inapposite nature of their argument. They thus quote the Protect Our Mountain Environment Court as requiring exercise of "the constitutional right to petition". Bribery is not a petition.

Defendants further argue at this, the final gasp in their presentation, that "the defendant's *principal* motive must have been *harm to the plaintiff*". This is precisely what occurred here. See Point III(C), supra.

VII. DEFENDANTS ARE GUILI'Y OF CONDEMNATION BY FRAUD [gggggggggggggg]

[gggggggggggggg]

Plaintiffs here depart from the Hogan Brief numbering. Point VII of that Brief argues ft dismissal based on the state courts' purported familiarity "with claims regarding the Bricktown redevelopment process". The Oklahoma Supreme Court has determined that the State Courts never ruled on the merits of this controversy. See Point "I", supra.

Defendants' persistent claims to the contrary notwithstanding, Plaintiffs didn't withdraw with prejudice their claims of conspiracy to condemn by fraud, and this Court did not so order. Thus this Court (Oct. 30, 2002 Tr., at 8) explicitly recognized that pag 23 of Plaintiffs' July 8, 2002 combined response to the Hogan Group's initial motion to dismiss moved "to delete count four and amend the complaint accordingly to clarify a uncleared items". While this Court subsequently (id. at 20) did state that the claim "hz been abandoned", the Court's recap of its rulings herein (id. at 22) did not state that the claim had been dismissed. Similarly while the language in parentheses under the title Plaintiffs' Sixth Cause of Action appears to limit the defendants therein to Defendaz Douglas, the Second Amended Complaint's Ad Damnum Claus, Second Amende Complaint at page 70 refers not solely to Defendant Douglas, but to "Defendants", plural.

Turning to the merits of this claim of Plaintiffs: Defendant Douglas' citation of 12 0.S. § 95 for the relevant limitations period is in error. Plaintiffs' claim of Conspiracy to Condemn presents facts nearly identical to those in Pelfresne v. Stephens, 35 F.Supp.2d 1064. (N.D. III. 1999). In Pelfresne, the City (Village) initiated a condemnation proceeding under its eminent domain power, allegedly for public purposes, and then transferred the property to a favorite private developer who had business relations with the Mayor and other public officials. The Court sustained the complaint under RICO, which carries a four-year statute of limitations. (Likewise, governmental immunity was held not apply.)

Here, Defendant relies on a September 1999 State Court motion for reconsideration. This is unavailing, the City continued to claim in the condemnation proceedings, including in their September 20, 2000 Appeal Brief that they condemned TTI's property for public use such as park, parking and public recreation Oklahoma Supreme Court Case No. 94,045, Proposition 4, pp. 13-14, with respect to which Plaintiffs request this Court to take judicial notice. Thus, based on the City's false

representations to the Oklahoma Supreme Court of "public use", the City defeated Plaintiff TTI's appeal via fraudulent factual representations, thus rendering the condemnation proceedings part and parcel of Defendants' RICO conspiracy herein. See Plaintiffs' RICO Case Statement, Response to Questions 5(1) and 5(g). The State Court Appellate Mandate was issued on November 28, 2001. Thus, by obtaining this judgment by fraud (and obstruction o justice) on November 28, 2001, even were one to apply the two-year State fraud statute of limitations, instead of RICO Conspiracy five-year statute of limitation, the expiration of two years will not occur until November 27, 2003. The RICO Conspiracy to condemned was first alleged on March 13, 2002, and then re-alleged on December 16, 2002 in the Second Amended Complaint — all before the expiration of any statute of limitation. Even if, arguendo, the Court looked into State statutes, the more applicable statute would be 12 O.S. § 93 (recovery of real property) (5 to 15 years). Obstruction of justice is a recognized predicate act under RICO. *See* George Lussier Enterprise. Inc., v. Subaru of New England. Inc., 2002 DNH 22 (U.S.D.C New Hampshire Civil Case. No. 99-109-8).

Plaintiffs respectfully incorporate by reference their response to the Amicus Brief filed simultaneously herewith.

CONCLUSION

This Court should (i) deny the motions to dismiss of the Hogan Defendants listed in the Note to page 1. supra, and of Defendant Douglas; and (ii) grant Plaintiffs such other and further relief as is just and proper herein.

Dated: New York, New York
March 10, 2003

Respectfully submitted,

S/Peter A. Joseph

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END OF APPENDIX

Dated: December 11, 2006.

06- 823 ~~No. 06-828~~

FILED

JAN 16 2007

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

MOSHE TAL; BRICKTOWN 2000, INC.; and TAL TECHNOLOGIES, INC.,

Petitioners,

v.

DAN RANDOLPH HOGAN; TMK/HOGAN JOINT VENTURE, a.k.a. COMMERCIAL REAL ESTATE SERVICES JOINT VENTURE; HOGAN PROPERTY MANAGEMENT, L.L.C.; BRICKTOWN-TMK/HOGAN PARKING, L.L.C., a.k.a. BRICKTOWN-SMC/HOGAN, L.L.C.; BRICKTOWN-TMK/HOGAN ENTERTAINMENT, L.L.C., a.k.a. BRICKTOWN ENTERTAINMENT, L.L.C.; MARK D. ELGIN; STONEGATE MANAGEMENT COMPANY L.L.C.; ELGIN DEVELOPMENT COMPANY, L.L.C.; TDC COMPANY, L.L.C.; AND TIANA P. DOUGLAS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT TIANA DOUGLAS

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QUESTIONS PRESENTED

1. Did the Tenth Circuit Court of Appeals limit its application of the more stringent pleading requirements in Fed. R. Civ. P. Rule 9(b) to only the fraud/racketeering elements of Petitioners' RICO claims?

2. Was dismissal of Tal Technologies, Inc.'s (hereinafter "TTI") claims under the Sherman Act consistent with federal jurisprudence?

3. Did the *Parker* doctrine provide immunity to Respondent Douglas from Petitioners' antitrust claims, and was that doctrine properly applied by the Tenth Circuit?

4. Was the Tenth Circuit correct in applying the *Rooker-Feldman* doctrine to those claims predicated on an alleged fraudulent condemnation, given the breadth of previous litigation surrounding the issue including a final state-court judgment from the Oklahoma Supreme Court?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
JURISDICTION	1
STATEMENT OF THE CASE	1
Introduction	1
Background	2
Petitioners File Federal Action	5
Appeal And Tenth Circuit Affirmation	6
REASONS FOR DENYING THE PETITION FOR CERTIORARI	9
I. The Tenth Circuit Court of Appeals' Decision to Affirm the Dismissal of Petitioners' RICO Claims was in Harmony with Extant Jurisprudence	9
A. The Circuit Court applied Fed. R. Civ. P. Rule 9 *only* to the fraud/racketeering elements of Petitioners' RICO claims	9
B. Petitioners' RICO claims were dismissed as a result of a failure to plead a *prima facie* case under 18 U.S.C. § 1962 and not because of an improper application of Rule 9	13
1. Petitioners' 18 U.S.C. § 1962(b) claim	13
2. Petitioners' 18 U.S.C. § 1962(c) claim	14
3. Petitioners' 18 U.S.C. § 1962(d) claim	15
C. Heightened pleading standards were not applied to the predicate act of "bribery" for purposes of Petitioners' RICO claims	15

TABLE OF CONTENTS – Continued

Page

II. Dismissal of Petitioners' claims under the Sherman Act was proper under the *Parker* doctrine and was not in discord with federal law ... 17

III. *Rooker-Feldman* was clearly applicable to the Petitioners' claims, and the Tenth Circuit's use of that doctrine was not contrary to established Supreme Court precedent 19

CONCLUSION 23

TABLE OF AUTHORITIES

Page

CASES

Ackerman v. Northwestern Mut. Life Ins. Co., 172 F.3d 467 (7th Cir. 1999) 11

Advocacy Organization for Patients and Providers v. Auto Club Ins. Assn., 176 F.3d 315 (6th Cir. 1999) 11

Associated General Contractors of California, Inc. v. California State Council of Carpenters, 459 U.S. 519, 103 S. Ct. 897, 74 L.Ed.2d 723 (1983) 17

Brooks v. Blue Cross & Blue Shield of Florida, 116 F.3d 1364 (11th Cir. 1997) 11

Cayman Exploration Corp. v. United Gas Pipe Line Co., 873 F.2d 1357 (10th Cir. 1989) 11, 14

City of Oklahoma City v. Oklahoma City Urban Renewal Auth., 988 P.2d 901 (Okla. 1999) 4

Danielson v. Burnside-Ott Aviation Training Center, Inc., 941 F.2d 1220 (C.A.D.C. 1991) 11

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L.Ed.2d 206 (1983) ..... *passim*

Eastern Railroad President Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 81 S. Ct. 523, 5 L.Ed.2d 464 (1961) 17, 18

Edwards v. First Nat. Bank of Bartlesville, 872 F.2d 347 (10th Cir. 1989) 15

Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 125 S. Ct. 1517, 161 L.Ed.2d 454 (2005) 20, 22

TABLE OF AUTHORITIES – Continued

Page

First Capital Asset Management, Inc. v. Satinwood, Inc., 385 F.3d 159 (2nd Cir. 2004) 11

Harrison v. Westinghouse Savannah River Co., 176 F.3d 776 (4th Cir. 1999) 11

Hawaii v. Standard Oil of California, 405 U.S. 251, 92 S. Ct. 885, 31 L.Ed.2d 184 (1972) 17

Hing Quan Lum v. Bank of America, 543 U.S. 918, 125 S. Ct. 271, 160 L.Ed.2d 203 (2004) 15

Howard v. America Online, Inc., 208 F.3d 741 (9th Cir. 2000), *cert. denied*, Howard v. America Online, Inc., 531 U.S. 828, 121 S. Ct. 77, 148 L.Ed.2d 40 (2000) 15

Illinois Brick Co. v. State of Illinois, 431 U.S. 720, 97 S. Ct. 2061, 52 L.Ed.2d 707 (1977) 17

Lancaster Comm. Hospital v. Antelope Valley Hospital Distr., 940 F.2d 397 (9th Cir. 1991) 11

Lance v. Dennis, 126 S. Ct. 1198, 163 L.Ed.2d 1059 (2006) 19, 20

Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 113 S. Ct. 1160, 122 L.Ed.2d 517 (1993) 11

Lum v. Bank of America, 361 F.3d 217 (3rd Cir. 2004) 11, 15

Mo's Express, LLC v. Sopkin, 441 F.3d 1229 (10th Cir. 2006) 20

National Organization for Women, Inc. v. Scheidler, 510 U.S. 249, 114 S. Ct. 798, 127 L.Ed.2d 99 (1994) 12

TABLE OF AUTHORITIES – Continued

Page

Oklahoma ex rel. Tal v. City of Oklahoma City, 534 U.S. 814, 122 S. Ct. 40, 151 L.Ed.2d 13 (2001) 5

Parker v. Brown, 317 U.S. 341, 63 S. Ct. 307, 87 L.Ed.2d 315 (1943) 8, 17, 18, 19

Parnes v. Gateway 2000, Inc., 122 F.3d 539 (8th Cir. 1997) 11

Reves v. Ernst & Young, 507 U.S. 170, 113 S. Ct. 1163, 122 L.Ed.2d 525 (1993) 14

Robbins v. Wilkie, 300 F.3d 1208 (10th Cir. 2002) 12

Rogers v. Missouri Pacific R.R. Co., 352 U.S. 521, 77 S. Ct. 459, 1 L.Ed.2d 515 (1957) 9

Rooker v. Fidelity Trust Company, 263 U.S. 413, 44 S. Ct. 149, 68 L.Ed. 362 (1923) ..... *passim*

Slaney v. Intl. Amateur Athletic Federation, 244 F.3d 580, *cert. denied*, 534 U.S. 828, 122 S. Ct. 69, 151 L.Ed.2d 35 (2001) 14

State ex rel. Tal v. City of Oklahoma City, 19 P.3d 268 (Okla. 2000) 1, 5

State ex rel. Tal v. City of Oklahoma City, 61 P.3d 234 (Okla. 2002) 6

State ex rel. Tal v. Norick, 991 P.2d 999 (Okla. 1999) 3

Swierkiewicz v. Sorema, N. A., 534 U.S. 506, 122 S. Ct. 992, 152 L.Ed.2d 1 (2002) 11

Tal Technologies, Inc. v. City of Oklahoma City, 535 U.S. 987, 122 S. Ct. 1539, 152 L.Ed.2d 465 (2002) ... 3, 21

Tel-Phonic Services, Inc. v. TBS Intern., Inc., 975 F.2d 1134 (5th Cir. 1992) 11

TABLE OF AUTHORITIES – Continued

Page

Town of Hallie v. City of Eau Claire, 471 U.S. 34, 105 S. Ct. 1713, 85 L.Ed.2d 24 (1985) 18

U.S. ex rel. Karvelas v. Melrose-Wakefield Hosp., 360 F.3d 220 (1st Cir. 2004) 11

United Mine Workers of America v. Pennington, 381 U.S. 657, 85 S. Ct. 1585, 14 L.Ed.2d 626 (1965) 17, 18

Wagh v. Metris Direct, 363 F.3d 821 (9th Cir. 2003) ... 13, 14

Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 91 S. Ct. 795, 28 L.Ed.2d 77 (1971) 16

FEDERAL STATUTES

18 U.S.C. § 201 16

18 U.S.C. § 1961(1) 10, 16

18 U.S.C. § 1962 13

18 U.S.C. § 1962(a) 10

18 U.S.C. § 1962(b) 8, 10, 13, 14, 15

18 U.S.C. § 1962(c) 8, 10, 14, 15

18 U.S.C. § 1962(d) 8, 10, 15

28 U.S.C. § 1254 1

28 U.S.C. § 1257 20

28 U.S.C. § 1367(c)(3) 7, 9

STATE STATUTES

Okla. Stat. tit. 11, § 38-101 to 123 18

Okla. Stat. tit. 12, § 1031 3

TABLE OF AUTHORITIES – Continued

Page

Okla. Stat. tit. 12, § 1038 3

Okla. Stat. tit. 62, §§ 372-373 4

OTHER AUTHORITIES

Fed. R. Civ. P. 8 12

Fed. R. Civ. P. 9 ..... *passim*

Fed. R. Civ. P. 9(b) ..... *passim*

JURISDICTION

On June 29, 2006, the Tenth Circuit issued its decision affirming the District Court judgment dismissing Petitioners' Second Amended Complaint. (Pet. App. A1-A45). The opinion is reported at 453 F.3d 1244. Petitioners sought rehearing on July 17, 2006. The Court of Appeals denied the Petition for Rehearing on September 11, 2006. (Pet. App. A46). The Petition for a Writ of Certiorari was filed on December 11, 2006.[1] Jurisdiction is invoked under 28 U.S.C. § 1254.

STATEMENT OF THE CASE

Introduction

As noted by the Tenth Circuit Court of Appeals in its thorough and well-reasoned June 29, 2006 Opinion, the present case is a direct by-product of recurrent and perpetual "frivolous" litigation initiated by the Petitioners against Respondent and other third parties.[2] Over the

[1] Petitioners' Petition for a Writ of Certiorari wholly fails to adhere to the Rules of the Supreme Court. This is yet another example of Petitioners' recalcitrance and utter disrespect for proper protocol and the decisions rendered by previous courts. Respondent moves to strike the Petition for failing to comply with the restrictions governing the font size of text and footnotes. Additionally, the Petition disregards the margin and text field requirements set forth in Rule 33. Petitioners also make specific allegations which are unsupported and outside of any record presented. *See*, Petition, at p. 27, fn. 13. The result of Petitioners' obstinance is an endless document with discordant and untenable ramblings.

[2] In *State ex rel. Tal v. City of Oklahoma City*, 19 P.3d 268, 272 (Okla. 2000), Justice Watt issued a separate written opinion, wherein he expressed his disapproval of the vexatious behavior exhibited by Moshe Tal.

course of nearly ten years, Petitioners have filed and/or been involved with numerous legal proceedings which concern the same issues presented in the underlying United States District Court case. The questions propounded herein do not warrant issuance of a writ of certiorari. Petitioners simply represent an on-going saga involving a malcontent landowner, insistent on refiling the same lawsuits over and over to exact his revenge on Oklahoma City.

Background

In accordance with Oklahoma law, the City of Oklahoma City created an entity known as the Oklahoma City Urban Renewal Authority ("OCURA"). (Pet. App., at A4). Respondent Tiana Douglas ("Douglas") acted as the executive director of OCURA at all times relevant herein. (*Id.*). Beginning in 1976, Oklahoma City embarked on an effort to restore an area of the metro known as "Bricktown." (*Id.*). The revitalization of Bricktown became most prolific during the late 1990's.

Petitioner TTI was the owner of certain real property located within Bricktown. (Pet. App., at A5). On March 25, 1997, Oklahoma City initiated a condemnation action to obtain two tracts of land owned by TTI, for the intended purpose of creating public parking, public recreation and park areas. (*Id.*). Although TTI objected to the use of eminent domain, a condemnation order was entered by the Oklahoma County District Court on August 28, 1997, and amended on October 2, 1997.[3] TTI did not seek a timely

[3] This litigation has been referred to as Tal Technologies, Inc. I ("TTI-I").

appeal of these orders in State Court. (Pet. App., at A5). However, TTI did file motions approximately two years after the final judgment, urging reconsideration of the condemnation orders.[4] (Pet. App., at A7). These motions were premised, at least in part, on alleged fraudulent conduct during the condemnation process. (*Id.*). On review the Oklahoma Court of Civil Appeals affirmed the final condemnation order. TTI's attempts to obtain certiorari review in both the Oklahoma and United States Supreme Court were denied.[5] (*Id.*).

As part of the urban renewal process, TTI and Bricktown, Inc., began submitting proposals to obtain redevelopment contracts in Bricktown. (Pet. App., at A5). After extensive debate, public hearings, and citizen review, the redevelopment contracts were awarded to TMK/Hogan rather than TTI or Bricktown, Inc. (*Id.*).

In the fall of 1998, Tal initiated a *qui tam* lawsuit against Oklahoma City which concerned operation of the Bricktown Ballpark.[6] (Pet. App., at A6). In response Oklahoma City filed a petition seeking declaratory judgment, and requested an order dismissing Tal's claims. The trial court dismissed Tal's claims and again the Oklahoma Supreme Court affirmed. *State ex rel. Tal v. Norick*, 991 P.2d 999, 1001 (Okla. 1999). (*Id.*). A disgruntled Tal then issued a written demand on January 12, 1999, alleging that the taking of TTI's land was constitutionally improper

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[4] Okla. Stat. tit. 12, § 1031 and § 1038 authorize a party to seek vacation, amendment and/or modification of any state court judgment procured by fraudulent means.

[5] *Tal Technologies, Inc. v. City of Oklahoma City*, 535 U.S. 987, 122 S. Ct. 1539, 152 L.Ed.2d 465 (2002).

[6] This matter has been referred to by previous courts as "Tal II."

and the product of "bid rigging."[7] (*Id.*). In response, Oklahoma City filed a declaratory judgment action against OCURA to ascertain whether the "taking" and the subsequent transfer of TTI's land were proper.[8] (*Id.*). A judgment was entered finding the Redevelopment Agreements between the City and OCURA to be "valid, lawful and constitutional in all respects . . . " Again the matter was presented and reviewed by the Oklahoma Appellate Courts. The Oklahoma Supreme Court endorsed the declaratory judgment, explaining:

> [T]here is nothing in the record to reflect that Oklahoma City acted in bad faith. Its actions were taken under the glare of public scrutiny and resisted by a significant minority of the City Council.

City of Oklahoma City v. Oklahoma City Urban Renewal Auth., 988 P.2d 901, 906 (Okla. 1999). Now two final state court judgments have considered and directly addressed the legality of the condemnation proceedings.

Undaunted, Tal filed yet another *qui tam* suit on March 15, 2000, against Oklahoma City, OCURA, and a plethora of individuals and companies.[9] (Pet. App., at A7). The matter was once more dismissed by the trial court. On appeal, the Oklahoma Supreme Court recognized the blatant abuse of process engaged in by Tal:

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[7] The demand was also made under the color of Oklahoma's *qui tam* statutes. Okla. Stat. tit. 62, §§ 372-373.

[8] This proceeding is referred to by the lower federal courts as "Tal I."

[9] "Tal III."

> That holding [*Tal I*] should have ended Tal and T.A.R.'s attacks against the City and the other participants in the Bricktown development projects but it did not do so. We hold that Tal and T.A.R.'s claims here were clearly and unequivocally disposed of in *Tal I*. Further, Tal and T.A.R. violated our rules in failing to divulge in their petition in error in this appeal the relationship between this appeal, *Tal I*, and *Tal II*.

State ex rel. Tal v. City of Oklahoma City, 19 P.3d 268, 272 (Okla. 2000). Concurring in part and dissenting in part, Justice Watt went even further than the majority:

> I dissent, however, because of the majority's failure to address what is to me quite clear: that Tal and T.A.R.'s conduct in filing and prosecuting this action is likely sanctionable . . . *this is but the latest episode in serial lawsuits and appeals by Tal and T.A.R. that have hindered the Bricktown project*, including, according to appellees, the loss of investors who have refused to participate only because of this constant litigation.

Id. at 272 (emphasis added). Tal attempted to secure a writ of certiorari in this Court, but was denied on October 1, 2001. *Oklahoma ex rel. Tal v. City of Oklahoma City*, 534 U.S. 814, 122 S. Ct. 40, 151 L.Ed.2d 13 (2001).

Petitioners file federal action

Knowing he would face harsh sanctions with continued litigation in state court, Tal turned his efforts to the United States District Courts.[10] Tal, TTI and Bricktown,

[10] Tal was actually sanctioned, harshly, by the Oklahoma County District Court in direct response to the bad faith misconduct exhibited

(Continued on following page)

Inc., filed their original Complaint (signed only by Moshe Tal) in the Western District of Oklahoma on March 14, 2002. (Pet. App., at A7). A First Amended Complaint was filed on April 1, 2002. (Pet. App., at A8). However, Tal was ordered by the District Court to retain counsel on behalf of his two corporate entities. (*Id.*). After TTI and Bricktown, Inc., secured counsel, Respondent Douglas and her co-defendants each filed motions to dismiss. (*Id.*). Following a hearing, the District Court sustained the motions, but granted Petitioners leave to amend their RICO and Sherman Act claims. (*Id.*). A Second Amended Complaint was filed on December 16, 2002, in which Petitioners alleged antitrust and RICO violations against Respondents, together with purported breaches of state tort laws. (*Id.*). Respondent Douglas and her co-defendants responded with motions to dismiss the Second Amended Complaint. (Pet. App., at A8-A9). The District Court granted Respondents' motions on September 30, 2003, and an appeal to the Tenth Circuit Court of Appeals ensued. (Pet. App., at A9).

Appeal and Tenth Circuit Affirmation

The Tenth Circuit affirmed the District Court's dismissal on all counts. First, the Tenth Circuit considered Petitioner Tal's individual claims. Upholding the District Court's dismissal, the Circuit Court found that Tal lacked standing to pursue claims under RICO and/or the

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in his unending legal filings. Although the Supreme Court of Oklahoma reversed the lower court's attorney fee award, the proverbial handwriting was on the wall – any further state court litigation would likely be met with punitive measures. *See*, *State ex rel. Tal v. City of Oklahoma City*, 61 P.3d 234 (Okla. 2002).

Sherman Act.[11] (Pet. App., at A10-A12). Their conclusion was based on the absence of any direct injury to Tal himself. Justice O'Brien summarized the Court's decision:

> As the district court held, Tal does not have standing to assert his individual RICO and antitrust claims because he has not shown that he suffered an antitrust injury as a result of the Appellees' actions. At best, TTI, as owner of the condemned property, suffered from the alleged fraudulent condemnation, and Bricktown, Inc., which submitted the redevelopment bid, suffered from the alleged Sherman Act and RICO violations as they relate to the award of development contracts.

(Pet. App, at A12). The Circuit Court's opinion does not specifically address Tal's personal claims in the context of claim or issue preclusion.

Next, the Tenth Circuit determined TTI's condemnation claim was barred under the *Rooker-Feldman* doctrine. (Pet. App., at A15). As set forth above, TTI was involved in an earlier legal proceeding concerning the condemnation of his property. The Tenth Circuit applied the doctrine because "Oklahoma courts squarely considered and rejected TTI's claims that the initial condemnation order had been obtained through fraud." (Pet. App., at A17). The

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[11] It appears, albeit not clearly, that Petitioner Tal acquiesces to the Circuit Court's dismissal of his individual federal claims. Confusingly, Tal seems to argue that his state law tort claims should not have been dismissed by the Tenth Circuit. However, a pendant claims dismissal was proper once all federal claims were eliminated. 28 U.S.C. § 1367(c)(3). Judge Friot exercised his right to decline supplemental jurisdiction of the state law claims as authorized by Section 1367. (Pet. App., at A74).

Court also rejected TTI's suggestion that *Rooker-Feldman* is inapposite because new defendants were named. (Pet. App., at A18). Further, the opinion emphasized the role of Oklahoma's own legal system in addressing any new allegations of fraud as they pertain to the condemnation action. (Pet. App., at A17).

The Circuit Court next approved the District Court's dismissal of Bricktown, Inc.'s antitrust claims against Douglas for lack of standing. (Pet. App., at A20). To reach this decision, the Court applied the *Parker* doctrine to shield Douglas from Bricktown, Inc.'s antitrust claims. (Pet. App., at A22-A23). As an alternative resolution of the legal issue, the Court of Appeals determined the Second Amended Complaint did not sufficiently plead an antitrust violation against Douglas. (Pet. App., at A25). According to the Circuit Court, Bricktown, Inc. merely raised "bald allegations of 'conspiracy' and 'bid-rigging,'" which are insufficient to support an alleged Sherman Act violation. (Pet. App., at A26).

The Court of Appeals also affirmed Judge Friot's order disposing of each of Petitioners' RICO claims. After applying Fed. R. Civ. P. 9(b)'s stricter pleading requirements to the predicate acts of fraud alleged in the Second Amended Complaint, the Tenth Circuit found sufficient details to support mail and wire fraud. (Pet. App., at A35-A37). Although the Court questioned whether Petitioners had adequately plead "a pattern of racketeering activity," the allegations were deemed sufficient for purposes of the Court's analysis. (Pet. App., at A40). Petitioners sought relief under 18 U.S.C. § 1962(b), (c) and (d) of the RICO Act. After analyzing the claims under each of the relevant sections, the Court of Appeals held that Petitioners had failed to plead prima facie RICO causes of action. (Pet.

App., at A40-A44). Only the acts of fraud alleged in Petitioners' RICO case were subjected to the tougher standards of Rule 9.

Finally, the Tenth Circuit followed 28 U.S.C. § 1367(c)(3) when it affirmed the District Court's refusal to exercise supplemental jurisdiction over Petitioners' state law claims. (Pet. App., at A45).

REASONS FOR DENYING THE PETITION FOR CERTIORARI

Assumption of jurisdiction by way of certiorari is not intended to serve as a means for the mere correction of alleged errors by the lower federal courts. *Rogers v. Missouri Pacific R.R. Co.*, 352 U.S. 521, 530-531, 77 S. Ct. 459, 1 L.Ed.2d 515 (1957). Rather it is to be "exercised sparingly" in order to "secure uniformity of decision between the Circuit Court of Appeals." *Id.*

I. The Tenth Circuit Court of Appeals' Decision to Affirm the Dismissal of Petitioners' RICO Claims was in Harmony with Extant Jurisprudence.

A. The Circuit Court applied Fed. R. Civ. P. Rule 9 *only* to the fraud/racketeering elements of Petitioners' RICO claims.

Initially, Petitioners suggest certiorari should be granted due to a perceived misapplication of Fed. R. Civ. P. Rule 9(b) to every element of the RICO claims in their

Second Amended Complaint.[12] Yet, this first proposition is wholly without merit and founded on an absolute misstatement of the Tenth Circuit's ruling in this case. The only aspect of Petitioners' RICO claims subject to the heightened pleading requirements of Rule 9 were the "predicate" acts of mail fraud and wire fraud – a proper application of federal law. Consequently, Petitioners fail to meet the threshold requirement which would warrant review by this Court.

To establish a viable civil claim under the RICO Act, a plaintiff must show (1) investment in, control of, or conduct of (2) an enterprise (3) through a pattern (4) of racketeering activity. 18 U.S.C. § 1962(a)-(c). The term "racketeering activity" is defined in 18 U.S.C. § 1961(1), and it includes bribery, mail fraud and wire fraud. Affirming Judge Friot's dismissal of TTI and Bricktown, Inc.'s RICO claims, the Tenth Circuit recognized the Second Amended Complaint and RICO Case Statements alleged fraud and bribery as the racketeering predicates mandated by Title 18 U.S.C. § 1962(a), (b) and (c).[13] (Pet. App., at A28). Not only was the Tenth Circuit's analysis and application consistent with its own prior decisions, it is in accord with other Circuit Courts, the Supreme Court, and the precise wording of Rule 9. Fed. R. Civ. P. Rule 9(b) provides:

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[12] The Circuit Court considered both the Second Amended Complaint and Petitioners' RICO Case Statement when assessing whether the pleadings were adequate to survive a 12(b)(6) motion. (Pet. App., at A28).

[13] Under RICO, "racketeering activity" includes mail fraud, wire fraud and racketeering. 18 U.S.C. § 1961(1).

> In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

Application of the strict requirements of Rule 9 to cases involving allegations of fraud has been recognized by this Court. *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168, 113 S. Ct. 1160, 122 L.Ed.2d 517 (1993); *Swierkiewicz v. Sorema, N. A.*, 534 U.S. 506, 513, 122 S. Ct. 992, 152 L.Ed.2d 1 (2002). Likewise, the Circuit Courts uniformly adhere to the directive in Rule 9(b). *U.S. ex rel. Karvelas v. Melrose-Wakefield Hosp.*, 360 F.3d 220, 226 (1st Cir. 2004); *First Capital Asset Management, Inc. v. Satinwood, Inc.*, 385 F.3d 159, 178-179 (2nd Cir. 2004); *Lum v. Bank of America*, 361 F.3d 217, 223-224 (3rd Cir. 2004); *Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 783-784 (4th Cir. 1999); *Tel-Phonic Services, Inc. v. TBS Intern., Inc.*, 975 F.2d 1134, 1138-1139 (5th Cir. 1992); *Advocacy Organization for Patients and Providers v. Auto Club Ins. Assn.*, 176 F.3d 315, 322 (6th Cir. 1999); *Ackerman v. Northwestern Mut. Life Ins. Co.*, 172 F.3d 467, 468-470 (7th Cir. 1999); *Parnes v. Gateway 2000, Inc.*, 122 F.3d 539, 549-550 (8th Cir. 1997); *Lancaster Comm. Hospital v. Antelope Valley Hospital Distr.*, 940 F.2d 397, 405 (9th Cir. 1991); *Brooks v. Blue Cross & Blue Shield of Florida*, 116 F.3d 1364, 1380-1381 (11th Cir. 1997); *Danielson v. Burnside-Ott Aviation Training Center, Inc.*, 941 F.2d 1220, 1229 (C.A. D.C. 1991).

The Tenth Circuit is no different, applying Rule 9(b)'s heightened pleading requirements only to the extent Plaintiff's RICO claims allege fraudulent conduct. *Cayman*

Exploration Corp. v. United Gas Pipe Line Co., 873 F.2d 1357, 1362 (10th Cir. 1989). Petitioners completely misstate the Tenth Circuit's existing legal application of Rule 9(b), suggesting that the appellate court uses "the heightened pleading requirement of Fed. R. Civ. P. 9(b) for all elements of RICO." Recently the Tenth Circuit recognized the importance of limiting Rule 9(b) to issues grounded in fraud. In *Robbins v. Wilkie*, 300 F.3d 1208, 1211 (10th Cir. 2002), the Circuit Court expressly rejected the heightened pleading requirements of Rule 9(b) for proving "damages" in a civil RICO case. The Court relied on the Supreme Court's holding in *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 256, 114 S. Ct. 798, 127 L.Ed.2d 99 (1994) (plaintiff's injuries in RICO case subject to general rules of pleading in Rule 8). Therefore, it is clear that the Tenth Circuit properly limits the use of Rule 9(b) to those RICO claims which allege fraud as the predicate act.

Despite Petitioners' suggestion, the Tenth Circuit did not apply Rule 9(b) in a manner inconsistent with the laws of the United States or prior decisions from this Court. Reviewing the case *de novo*, the Circuit Court only applied the heightened pleading requirement of Rule 9(b) to the fraudulent elements of Petitioners' RICO claims. Because Petitioners have failed to demonstrate a legitimate basis for certiorari jurisdiction, the Petition should be denied inasmuch as there is error alleged with respect to dismissal of the RICO claims.

B. Petitioners' RICO claims were dismissed as a result of a failure to plead a *prima facie* case under 18 U.S.C. § 1962 and not because of an improper application of Rule 9.

After applying Rule 9 to the predicate acts of mail fraud and wire fraud, the Tenth Circuit concluded that the Petitioners had sufficiently alleged mail and wire fraud in their Second Amended Complaint. (Pet. App., at A35-A37). Thereafter, the Court inspected the remaining allegations surrounding Petitioners' RICO claims to determine if they could withstand a 12(b)(6) challenge. The Court raised serious doubts about whether Petitioners had made sufficient allegations to establish "a pattern of racketeering activity." (Pet. App., at A39). Nevertheless, the Tenth Circuit found the allegations were sufficient to withstand a 12(b)(6) motion. This clearly demonstrates that the Tenth Circuit did not weigh Petitioners entire RICO claim under Rule 9(b).

1. Petitioners' 18 U.S.C. § 1962(b) claim.

Evaluating the Section 1962(b) claim, the Court held that Petitioners failed to provide sufficient allegations to show "an interest in or control of the Renewal Authority or the city council" by way of the predicate acts. (Pet. App., at 42). Under Section 1962(b), a party must adequately plead that a defendant (1) acquired or maintained an interest in or control of, (2) an enterprise engaged in interstate commerce, (3) through a pattern, (4) of racketeering activity, or collection of an unlawful debt. Petitioners were required by 1962(b) to allege a nexus between control over the enterprise and the racketeering activity. *Wagh v. Metris Direct*, 363 F.3d 821, 830 (9th Cir. 2003) (affirming 12(b)(6) dismissal of 1962(b) claim for failure to adequately

plead connection between predicate acts and control). Because Petitioners failed to do so, the Circuit Court, without applying Rule 9, found the Second Amended Complaint to be deficient for purposes of a Section 1962(b) claim. (Pet. App., at A42). Petitioners have not demonstrated how dismissal of a complaint for failure to plead each element is somehow contrary to decisions in other Circuits or this Court. In fact, the Supreme Court denied certiorari on this precise issue in *Wagh*. *See*, *Wagh v. Metris Direct, Inc.*, 541 U.S. 1043, 124 S. Ct. 2176, 158 L.Ed.2d 733 (2004).

2. Petitioners' 18 U.S.C. § 1962(c) claim.

To withstand a challenge under Rule 12(b)(6), a plaintiff seeking relief through Section 1962(c) of RICO must satisfactorily plead (1) participation in the conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity. *Cayman Exploration Corp.*, 873 F.2d at 1362. The Tenth Circuit utilized this Court's "operation or management" test[14] when analyzing whether Douglas participated in the conduct of an enterprise. (Pet. App., at A43). Because the Petitioners failed to allege Douglas' involvement in any of the predicate acts, the Second Amended Complaint failed to state a claim under Section 1962(c). (Pet. App., at 43). As set forth previously, the Tenth Circuit never used Rule 9 in its review of the 1962(c) RICO claim. The Court only found Petitioners had neglected to plead a *prima facie* case. *See*, *Slaney v. Intl. Amateur Athletic Federation*, 244 F.3d 580, 598-599, *cert.*

[14] *Reves v. Ernst & Young*, 507 U.S. 170, 179, 113 S. Ct. 1163, 122 L.Ed.2d 525 (1993).

denied, 534 U.S. 828, 122 S. Ct. 69, 151 L.Ed.2d 35 (2001) (finding dismissal under 12(b)(6) proper where plaintiffs failed to allege sufficient facts to support 1962(c) claim).

3. Petitioners' 18 U.S.C. § 1962(d) claim.

Because both of Petitioners' other RICO claims under 1962(b) and 1962(c) were insufficient, the Tenth Circuit correctly affirmed the dismissal of the claim under 1962(d). *Edwards v. First Nat. Bank of Bartlesville*, 872 F.2d 347, 352 (10th Cir. 1989), *Lum v. Bank of America*, 361 F.3d 217, 227, fn. 5 (3rd Cir. 2004), *cert. denied*, *Hing Quan Lum v. Bank of America*, 543 U.S. 918, 125 S. Ct. 271, 160 L.Ed.2d 203 (2004), *Howard v. America Online, Inc.*, 208 F.3d 741, 751 (9th Cir. 2000), *cert. denied*, *Howard v. America Online, Inc.*, 531 U.S. 828, 121 S. Ct. 77, 148 L.Ed.2d 40 (2000).

C. Heightened pleading standards were not applied to the predicate act of "bribery" for purposes of Petitioners' RICO claims.

Petitioners also failed to plead their allegations of bribery with adequacy. More importantly, the Tenth Circuit did not utilize a more stringent test for evaluating the predicate act of bribery. Not once does the Tenth Circuit mention Rule 9(b) in the same breath with the bribery claim. (Pet. App., at A37-A38). Contrary to the Petitioners' assertion, the Circuit Court simply concluded the bribery allegation was insufficient.[15]

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[15] Although Petitioners do not contest the denial of leave to amend their Second Amended Complaint, such a ruling is purely discretionary.

(Continued on following page)

It is undisputed that bribery is "racketeering activity" under RICO. 18 U.S.C. § 1961(1). To utilize bribery as the catalyst for a RICO claim, a Plaintiff must sufficiently set forth (1) facts adequate to support a finding of bribery under 18 U.S.C. § 201, or (2) allegations which would present a legitimate violation of state bribery laws. 18 U.S.C. § 1961(1). Consistent with this standard, the Circuit Court found Petitioners had failed to properly assert a bribery allegation under 18 U.S.C. § 201. The Court also noted that Bricktown, Inc., and TTI conceded their inability to sufficiently raise a proper claim of bribery under federal law. (Pet. App., at A37). Petitioners never alleged in their Second Amended Complaint or RICO Case Statement that Douglas (or the other Respondents) had violated a state bribery statute. Therefore, under the general pleading requirements of Rule 8, Petitioners failed to adequately state a claim for which relief could be granted. Rule 9 and the heightened pleadings requirements mandated therein were never employed by the Tenth Circuit. Requiring Petitioners to present factual statements, which, at a minimum, set forth the necessary elements of a cause of action, does not amount to reviewing the case under Rule 9(b).

Petitioners have failed to demonstrate that the Circuit Court took action which was contrary to the United States Constitution, Supreme Court precedent, or in conflict with the decisions from any of the other intermediate federal courts. Therefore, the Petition for a Writ of Certiorari should be denied.

Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330, 91 S. Ct. 795, 28 L.Ed.2d 77 (1971).

II. Dismissal of Petitioners' claims under the Sherman Act was proper under the *Parker* doctrine and was not in discord with federal law.

Once again Petitioners misrepresent the actual basis behind the Tenth Circuit's decision to uphold the dismissal of the antitrust claims contained in the Second Amended Complaint. First, TTI's antitrust claims were dismissed solely on the basis of standing. The claims levied by Bricktown, Inc. failed to state a claim because Douglas was immune from liability under *Parker v. Brown*, 317 U.S. 341, 63 S. Ct. 307, 87 L.Ed.2d 315 (1943). Douglas' co-defendants were protected by way of and the *Noerr-Pennington* doctrine.[16]

The Circuit Court found that TTI lacked standing to assert causes of action under the Sherman Act. This was due to the fact that TTI's purported injuries were ancillary and only a derivative of the alleged antitrust violations suffered by Bricktown, Inc. (Pet. App., at A20). Such a holding is entirely consistent with Supreme Court precedent. *See*, *Associated General Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 539-540, 103 S. Ct. 897, 74 L.Ed.2d 723 (1983), *Hawaii v. Standard Oil of California*, 405 U.S. 251, 264, fn. 14, 92 S. Ct. 885, 31 L.Ed.2d 184 (1972), *see also*, *Illinois Brick Co. v. State of Illinois*, 431 U.S. 720, 97 S. Ct. 2061, 52 L.Ed.2d 707 (1977) (finding that only direct buyers of products from manufacturer could assert antitrust case

[16] The *Noerr-Pennington* doctrine is a culmination of *Eastern Railroad President Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S. Ct. 523, 5 L.Ed.2d 464 (1961) and *United Mine Workers of America v. Pennington*, 381 U.S. 657, 85 S. Ct. 1585, 14 L.Ed.2d 626 (1965).

and rejecting secondary buyers' claims). Therefore, TTI's suggestion that its antitrust claims were dismissed after being subjected to a more rigorous inspection of the allegations is unfounded and it does not support the request for a writ of certiorari.

Dismissal of Bricktown, Inc.'s antitrust claims was based on the Tenth Circuit's application of the *Parker* and *Noerr-Pennington* doctrines. While Petitioners acknowledge the Circuit Court's reliance on these legal axioms, they do not attack their proper application in this case. According to *Parker*, states are free to engage in anticompetitive enterprises without repercussions under the Sherman Act. When state law permits, municipalities may also be immune from antitrust liability. *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 38-39, 105 S. Ct. 1713, 85 L.Ed.2d 24 (1985). As noted by the Tenth Circuit, Oklahoma enacted legislation[17] which authorized the creation of "urban renewal authorities." (Pet. App., at A22). Approving of the District Court's analysis on the issue, the Circuit Court concluded that the Oklahoma statutes created inherent authority in the urban renewal authorities to engage in anticompetitive behavior. (Pet. App., at A22). Consequently, Respondent Douglas is entitled to immunity under *Parker* – precisely the decision reached by the Court of Appeals. (Pet. App., at A22).

As an alternative theory in support of dismissal, the Tenth Circuit found that Bricktown, Inc.'s antitrust claims were insufficient as a matter of law. However, as indicated herein above, their principal justification for upholding the dismissal of the antitrust cause of action against

[17] Okla. Stat. tit. 11, § 38-101 to 123.

Respondent Douglas was based on the *Parker* doctrine. Petitioners suggest that the Circuit Court mistakenly subjected the antitrust allegations to rigors of Rule 9. Nowhere in the Court's discussion of the adequacy/inadequacy of the antitrust claims does the Court ever refer to Rule 9.

III. *Rooker-Feldman* was clearly applicable to the Petitioners' claims, and the Tenth Circuit's use of that doctrine was not contrary to established Supreme Court precedent.[18]

Without a doubt, the Tenth Circuit correctly applied the *Rooker-Feldman*[19] doctrine to TTI's RICO claims based on an alleged fraudulent condemnation of the subject property in Bricktown. Furthermore, the Court of Appeals weighed this Court's recent narrowing of the doctrine. Petitioners argue that the Tenth Circuit's use of *Rooker-Feldman* in this case conflicts with recent decisions in this Court.

In the recent case of *Lance v. Dennis*, 126 S. Ct. 1198, 163 L.Ed.2d 1059 (2006), *Rooker-Feldman* was revisited by this Court. The foundation behind the *Rooker-Feldman*

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[18] Confusingly, Petitioners claim the Tenth Circuit acted in contravention of Supreme Court precedent by applying principles of claim and issue preclusion to the Second Amended Complaint. However, the Court of Appeals did not rely on claim or issue preclusion to reach its decision. Thus, this issue is not addressed by Douglas herein and is not proper for certiorari review.

[19] The *Rooker-Feldman* doctrine originated from *Rooker v. Fidelity Trust Company*, 263 U.S. 413, 44 S. Ct. 149, 68 L.Ed. 362 (1923) and this Court's subsequent opinion in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L.Ed.2d 206 (1983).

doctrine is set forth in 28 U.S.C. § 1257, which provides that the United States Supreme Court holds exclusive jurisdiction over appeals from final state-court judgments. *Lance*, at 1200. Consequently, the doctrine prohibits lower federal courts from exercising jurisdiction over state-court judgments which have been fully resolved. *Id.*, at 1201. The preclusive effect of *Rooker-Feldman* is triggered when claims have been actually decided by a state court or are inextricably intertwined with a prior state-court judgment. *Mo's Express, LLC v. Sopkin*, 441 F.3d 1229, 1233 (10th Cir. 2006), citing *Rooker*, 263 U.S. at 415-16, and *Feldman*, 460 U.S. at 483, n. 16.

Emphasizing the doctrine's narrow reach, the *Lance* Court, *per curiam*, reiterated that application of *Rooker-Feldman* is limited to:

> [C]ases brought by ***state-court losers*** complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. (Emphasis added).

Lance, at 1201, quoting *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L.Ed.2d 454 (2005). While *Lance* and *Exxon* both command limitations on the scope of *Rooker-Feldman*, neither case urges a complete abrogation of the doctrine's fundamental precepts. Further, the pronouncements in those cases are readily distinguishable from application of *Rooker-Feldman* to TTI's claims of fraudulent condemnation.

First, as described previously, TTI was the owner of the parcels of land procured through eminent domain. Additionally, TTI was the ***losing party*** in state-court

litigation involving the condemnation of the subject properties. TTI's initial assertion of "fraudulent condemnation" was made in the state-court action. After the Oklahoma Supreme Court declined review, TTI's request for certiorari review was rejected by this Court. *See*, *Tal Technologies, Inc. v. City of Oklahoma City*, *supra* fn. 5. The scenario presented is a "text-book" example of what *Rooker-Feldman* is designed to prohibit. Petitioners allege that the Tenth Circuit erred by applying *Rooker-Feldman* based on the *qui tam* proceedings initiated by Moshe Tal and Taxpayers Against Ripoffs ("TAR"). (*See*, Petition, at p. 21-23). This argument is entirely gratuitous. The Court of Appeals expressly relied on TTI's assertions of fraud in the condemnation action; the subsequent ratification of that judgment in the Oklahoma Court of Civil Appeals; the Oklahoma Supreme Court's denial of certiorari in the matter; and this Court's decision to decline review. (Pet. App., at A5, A7, A17). To the extent Bricktown, Inc., alleges error for misapplication of *Rooker-Feldman* it is unsupported. Bricktown, Inc. had no viable claim based on fraudulent condemnation as it was not the owner of the land in question. The Tenth Circuit never considered an alleged claim of fraud on the part of Bricktown, Inc. because they were not the owner of the condemned property. (Pet. App., at A12). Petitioners also try to suggest *Rooker-Feldman* is ineffectual when parallel state-court litigation is pending. First, the "parallel" state-court proceedings referenced by Petitioners could hardly have been considered parallel. As Petitioners admit, one of the state-court cases was not even initiated until after the District Court had sustained the 12(b)(6) motions. The other "parallel" case is an attempt, once more, to collaterally attack the final judgment in the condemnation case.

Second, Petitioners' argument is flawed in that it assumes the parallel state-court case is well-founded and not subject to dismissal under the law of the case doctrine. If the Court were to allow such an interpretation of *Exxon*, litigants could thwart any attempts at dismissing federal lawsuits by initiating meritless (or persistent) actions in state-court.

Third, Petitioners' subsequent litigation is irrelevant, because TTI *lost* its pursuit of the fraudulent condemnation claim when it was denied certiorari by the Oklahoma Supreme Court. Under *Rooker-Feldman*, dismissal is required once a defendant establishes that the federal court plaintiff lost a final decision in state-court on the same issues. That is precisely what happened and why the Tenth Circuit applied the doctrine to dispense with the fraudulent condemnation claim. The mere fact that Petitioners have once again embarked on a mission to pursue the same frivolous litigation does not remove the claim from the purview of *Rooker-Feldman*.

Accordingly, the question of whether TTI's land was obtained by fraudulent means is "law of the case," and was properly excluded by the District Court under the *Rooker-Feldman* doctrine. Petitioner has failed to establish a proper basis for certiorari review of this issue, and therefore, the Petition should be denied.

CONCLUSION

Nothing presented by the Petitioners approaches what is necessary to be granted a writ of certiorari. It is clear the Tenth Circuit strictly applied the legal principles prescribed by this Court. Petitioners have primarily presented this Court with bald assertions, utterly failing to meet their burden of demonstrating that the Circuit Court's decision warrants review. The Petition offered no legal support to show the Court of Appeals' findings were inconsistent with prior decisions from the Supreme Court. It also presented nothing which reflects the Court's opinion was divergent from the rules of law established by other Circuits. Perhaps more compelling is the sheer volume of cases which have already resolved the issues presented. Despite Petitioners' attempts to convince this Court of the case's novelty, the Petition offers nothing more than hyperbole and misinterpretations of the Tenth Circuit's opinion. In light of the lack of any adequate justification for certiorari jurisdiction, the Petition in this case should be denied *in toto*.

Respectfully submitted,

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4

No. 06-823

In The
Supreme Court of the United States

MOSHE TAL, BRICKTOWN-2000, INC. and TAL TECHNOLOGIES, INC.,

Petitioners,

vs.

DAN RANDOLPH HOGAN, TMK/HOGAN JOINT VENTURE, a.k.a. COMMERCIAL REAL ESTATE SERVICES JOINT VENTURE, HOGAN PROPERTY MANAGEMENT, L.L.C., BRICKTOWN-TMK/HOGAN PARKING, L.L.C., BRICKTOWN-TMK/HOGAN ENTERTAINMENT, L.L.C., STONEGATE MANAGEMENT COMPANY, L.L.C., ELGIN DEVELOPMENT COMPANY, L.L.C., TDC COMPANY, L.L.C., and TIANA DOUGLAS,

Respondents.

On Petition For A Writ Of Certiorari To The Tenth Circuit Court Of Appeals

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Whether the Tenth Circuit Court of Appeals properly applied the heightened pleading standard of Fed.R.Civ.P. 9 to Petitioners Tal Technologies, Inc. and Bricktown-2000, Inc.'s allegations of mail fraud and wire fraud?

2. Whether the Tenth Circuit Court of Appeals properly required Petitioners Tal Technologies, Inc. and Bricktown-2000, Inc., who confessed their inability to state a predicate bribery claim under 18 U.S.C. § 201, to move in the district court for permission to file an amended pleading in order to state a different bribery claim rather than allowing them to move to amend, for the first time, in the appellate court?

3. Whether the Tenth Circuit Court of Appeals affirmed the district court's dismissal of Petitioner Moshe Tal's individual claims based on *res judicata* when neither the written decision of the district court nor the appellate decision discussed or analyzed *res judicata* as a basis for the dismissal?

4. Whether Petitioner Moshe Tal has failed to show reversible error with respect to his individual claims when Petitioner Tal failed to appeal the Tenth Circuit Court of Appeals' decision that he lacks standing to pursue, in his individual capacity, a RICO and an Antitrust claim?

5. Whether the Tenth Circuit Court of Appeals properly affirmed the district court's dismissal of Petitioner Tal Technologies, Inc.'s fraudulent condemnation claim for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine because Tal Technologies, Inc.'s prior appeal of the Oklahoma County district court's rejection of its fraudulent condemnation claim resulted in a final order that the condemnation was proper?

QUESTIONS PRESENTED – Continued

6. Whether the Tenth Circuit Court of Appeals properly affirmed the district court's ruling that Petitioner Bricktown-2000, Inc. could not rely on the fraudulent condemnation allegation as a predicate act to support Bricktown-2000's RICO claim because the City of Oklahoma City, which condemned the property, was named as the "enterprise" for purposes of Petitioners' RICO claim?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Hogan Respondents state:

Respondent TMK/Hogan Joint Venture a.k.a. Commercial Real Estate Services Joint Venture is owned 50% by Stonegate Management Company, L.L.C., which has no corporate parent, and 50% by HPC Investments, L.L.C., which has no corporate parent.

Respondents Hogan Property Management, L.L.C. and Stonegate Management Company, L.L.C. have no corporate parent, nor do any publicly traded companies own 10% or more of their stock.

Respondent Bricktown-TMK/Hogan Parking, L.L.C., now known as Bricktown-SMC/Hogan Parking, L.L.C., is owned 50% by Stonegate Management Company, L.L.C. and 50% by Hogan Property Management, L.L.C.

Respondent Bricktown-TMK/Hogan Entertainment, L.L.C., now known as Bricktown Entertainment, L.L.C., is owned 50% by Stonegate Management Company, L.L.C. and 50% by Hogan Property Management, L.L.C.

Respondent Elgin Development Company, L.L.C. is wholly owned by Stonegate Realty Company, L.L.C., which has no corporate parent.

Respondent TDC Company, L.L.C. is wholly owned by Elgin Development Company, L.L.C., which is wholly owned by Stonegate Realty Company, L.L.C.

TABLE OF CONTENTS

	Page
COUNTERSTATEMENT OF THE QUESTIONS PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	vii
STATEMENT OF THE CASE	1
Introduction	1
A. The State Court Condemnation Proceeding and Petitioner Tal Tech's State Court Appeal	3
B. *Tal I*: Tal's First State Court Challenge to the Award of the Redevelopment Agreements	3
C. *Tal II*: Tal's Challenges to the Bricktown Ballpark Stadium Leases	5
D. *Tal III*: Tal's State Court Lawsuit Attacking the *Tal I* Judgment Which Declared the Redevelopment Agreements to be Valid and Constitutional in All Respects	6
E. This Action: Petitioners' Federal Court Litigation	7
REASONS FOR DENYING A WRIT OF CERTIORARI	8
I. CERTIORARI SHOULD BE DENIED BECAUSE PETITIONERS TAL TECH AND BT-2000 FAILED TO DEMONSTRATE THAT THE TENTH CIRCUIT DECIDED A MATTER IN DIRECT CONFLICT WITH DECISIONS OF THIS COURT AND OTHER FEDERAL COURTS, AND THE ISSUE RAISED BY PETITIONERS IS NOT A QUESTION OF FIRST IMPRESSION AND DOES NOT INVOLVE AN IMPORTANT ISSUE OF FEDERAL LAW	8

TABLE OF CONTENTS – Continued

Page

A. Summary of the Tenth Circuit's Decision with Respect to the RICO Claim 9

B. Application of Rule 9 to Petitioners' Second Amended Complaint 11

C. Petitioners Confess Rule 9's Heightened Pleading Standard is Applicable to the Predicate Acts of Mail Fraud and Wire Fraud 15

D. The Appellate Court's Application of Rule 9 did not Result in the Dismissal of Petitioners Tal Tech and BT-2000's RICO Claims 15

II. CERTIORARI SHOULD BE DENIED BECAUSE PETITIONERS TAL TECH AND BT-2000 CONCEDED THEIR FAILURE TO STATE A CLAIM UNDER 18 U.S.C. § 201 TO THE DISTRICT COURT AND DID NOT SEEK LEAVE, FROM THAT COURT, TO FILE A THIRD AMENDED COMPLAINT TO ATTEMPT TO STATE A DIFFERENT BRIBERY CLAIM 17

III. CERTIORARI SHOULD BE DENIED BECAUSE PETITIONER TAL HAS FAILED TO DEMONSTRATE REVERSIBLE ERROR IN THE APPELLATE COURT'S DECISION TO AFFIRM DISMISSAL OF HIS INDIVIDUAL CLAIMS 19

IV. CERTIORARI SHOULD BE DENIED BECAUSE PETITIONER TAL HAS NOT APPEALED THE FINDING THAT HE LACKS STANDING TO PURSUE HIS INDIVIDUAL RICO AND ANTITRUST CLAIMS 20

TABLE OF CONTENTS – Continued

Page

V. CERTIORARI SHOULD BE DENIED BECAUSE PETITIONERS TAL TECH AND BT-2000 FAILED TO DEMONSTRATE THAT THE TENTH CIRCUIT APPLIED THE ROOKER-FELDMAN DOCTRINE IN CONFLICT WITH A DECISION OF THIS COURT AND OTHER FEDERAL COURTS, AND THE ISSUE RAISED BY PETITIONERS DOES NOT INVOLVE AN IMPORTANT ISSUE OF FEDERAL LAW 21

A. Application of *Rooker-Feldman* Doctrine to Tal Tech's Fraudulent Condemnation Claim. 22

1. Summary of Tenth Circuit's decision with respect to Tal Tech's fraudulent condemnation claim 22

2. The Tenth Circuit did not use the concept of privity to extend application of *Rooker-Feldman* to non-parties to prior litigation 22

B. The Tenth Circuit's Treatment of Petitioners Tal Tech and BT-2000's Attempt to Use Tal Tech's Allegation of Fraudulent Condemnation to Establish a Predicate Act Necessary to Support their RICO Claim 26

C. The Tenth Circuit's Application of the *Rooker-Feldman* Doctrine is not in Direct Conflict with a Decision of this Court or Other Federal Courts 27

CONCLUSION 30

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Abels v. Farmers Commodities Corp., 259 F.3d 910 (8th Cir. 2001) 14

Adarand Constructors, Inc. v. Mineta, 534 U.S. 103 (2001) 20

Ahmed v. Rosenblatt, 118 F.3d 886 (1st Cir. 1997) 14

Brooks v. Blue Cross and Blue Shield of Florida, Inc., 116 F.3d 1364 (11th Cir. 1997) 14

Cayman Exploration Corp. v. United Gas Pipe Line Co., 873 F.2d 1357 (10th Cir. 1989) 11, 12, 15

Chandler v. Florida, 449 U.S. 560 (1981) 28

Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005) 24, 25, 27, 29

Farlow v. Peat, Marwick, Mitchell & Co., 956 F.2d 982 (10th Cir. 1992) 11, 12

First Capital Asset Mgmt., Inc. v. Satinwood, 385 F.3d 159 (2nd Cir. 2004) 14

Formax, Inc. v. Hostert, 841 F.2d 388 (C.A. Fed. 1988) 15

Haroco, Inc. v. American National Bank & Trust of Chicago, 747 F.2d 384 (7th Cir. 1984) 14

Lancaster Commun. Hosp. v. Antelope Valley Hosp. Dist., 940 F.2d 397 (9th Cir. 1991) 14

Lance v. Dennis, 126 S. Ct. 1198 (2006) 25, 26, 27

Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163 (1993) 12, 13

TABLE OF AUTHORITIES – Continued

Page

Lum v. Bank of America, 361 F.3d 217 (3rd Cir. 2004)..... 14

McDonald v. Schenecker, 18 F.3d 491 (7th Cir. 1994) 14

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).....12, 13

Michael Building Co. v. Ameritrust Co., N.A., 848 F.2d 674 (6th Cir. 1988)..... 15

Mo's Express, LLC v. Sopkin, 441 F.3d 1229 (10th Cir. 2006).....26, 27

O'Neill v. AWGI Lines, 74 F.3d 93 (5th Cir. 1996) 20

Oklahoma ex rel. Tal v. City of Okla. City, 534 U.S. 814 (2001)..... 6

Otto v. Variable Annuity Life Insurance, 814 F.2d 1127 (7th Cir. 1986)..... 14

Robbins v. Wilkie, 300 F.3d 1208 (10th Cir. 2002).....11, 12

Rotella v. Wood, 528 U.S. 549 (2000)..... 13

Swierkiewicz v. Sorema, N.A., 534 U.S. 506 (2002) 12, 13

Tal v. Hogan, 453 F.3d 1244 (10th Cir. 2006).....*passim*

Tal Techs., Inc. v. City of Okla. City, 535 U.S. 987 (2002).....3, 6, 24, 25, 27

Tel-Phonic Services, Inc. v. TBS Intern., Inc., 975 F.2d 1134 (5th Cir. 1992)..... 14

The Tool Box, Inc. v. Ogden City Corp., 419 F.3d 1084 (10th Cir. 2005)..... 18

United States v. Neopolitan, 791 F.2d 489 (7th Cir. 1986)..... 14

Westways World Travel v. AMR Corp., 182 F. Supp. 2d 952 (C.D. Cal. 2001)..... 14

TABLE OF AUTHORITIES – Continued

Page

STATE CASES

City of Oklahoma City v. Tal Tech Inc., Case No. 94,045 (Okla.Civ.App. July 31, 2001) 3, 24, 25, 27

City of Oklahoma City v. Urban Renewal, 1999 OK 71, 988 P.2d 901..... 1, 5

Estate of Severns v. Severns, 1982 OK 64, 650 P.2d 854 28

Oklahoma City Urban Removal Authority v. City of Oklahoma City, 2005 OK 2, 110 P.3d 550..... 4, 6

State ex rel. Tal v. City of Oklahoma City, 2000 OK 70, 19 P.3d 268 (*per curiam*) 6

State ex rel. Tal v. Norick, 1999 OK 85, 991 P.2d 999 .... 5, 6

OTHER

Tal Techs., Inc. v. City of Okla. City, Petition for a Writ of Certiorari, No. 01-1147, 2002 WL 32134365..... 28

FEDERAL STATUTES

15 U.S.C. § 21..... 2

18 U.S.C. § 1341..... 9

18 U.S.C. § 1343..... 9

18 U.S.C. § 1962.....2, 7, 9, 10

18 U.S.C. § 201..... 9, 17

28 U.S.C. § 1257(a) 28

42 U.S.C. § 1983..... 13

Fed.R.Civ.P. 8(a).....*passim*

Fed.R.Civ.P. 9 .....*passim*

TABLE OF AUTHORITIES – Continued

Page

STATE STATUTES

Okla. Stat. Ann., tit. 12 § 1031.1 27
Okla. Stat. Ann., tit. 21 § 381 17
Okla. Stat. Ann., tit. 62 §§ 372-374 4

STATEMENT OF THE CASE

Introduction.

The litigation below is one installment in a series of related lawsuits filed by Petitioner Moshe Tal ("Tal"), together with one or more of his corporations or affiliated taxpayer protest groups, all revolving around redevelopment projects concerning the Oklahoma City Metropolitan Area Projects ("MAPS"). The MAPS projects, initiated by a one-cent sales tax increase approved by City voters in 1993, were the foundation and centerpiece of the City of Oklahoma City's ("City") attempts to eliminate blight and revitalize its urban core. This urban renewal project was conceived as a series of redevelopment projects intended to revive the collection of old warehouses called "Bricktown," located in southern downtown Oklahoma City. The City Council of Oklahoma City passed a redevelopment plan ("Redevelopment Plan") designed to attract private investors to build sports venues and additional parking and entertainment improvements, and to redevelop the blighted Bricktown area.

Petitioner BT-2000, Inc. ("BT-2000"), a corporation headed by Petitioner Tal, was competing with Respondent Bricktown-TMK/Hogan Entertainment, L.L.C. a.k.a. Bricktown Entertainment, L.L.C. ("TMK/Hogan") for the award of certain redevelopment agreements (the "Redevelopment Agreements") which were part of the City's Redevelopment Plan. However, "after widely publicized hearings and based on an extremely close vote, [the redevelopment rights were] awarded to Bricktown Parking Investors and [Respondent] TMK/Hogan rather than Tal's group." *City of Oklahoma City v. Urban Renewal*, 1999 OK 71, ¶¶ 20, 21, 988 P.2d 901, 905 ("*Tal I*").[1] Also as part of

[1] TMK/Hogan is the only Respondent that was a party to the Redevelopment Agreements. Contrary to Petitioners' statement (Pet. at

(Continued on following page)

its MAPS redevelopment efforts, the City in 1997 condemned 1.4 acres of Petitioner Tal Technologies, Inc.'s ("Tal Tech") Bricktown-area property.

In the intervening 10 years, Petitioners Tal, BT-2000, Tal Tech and others have instituted numerous serial challenges to the validity of both the award and implementation of the Redevelopment Agreements and the condemnation; one such episode was the federal court litigation below filed in 2002 by Petitioners against Respondent TMK/ Hogan, which was awarded the Redevelopment Agreements, as well as Respondents Dan Randolph Hogan, Hogan Property Management, L.L.C., Bricktown-TMK/ Hogan Parking, L.L.C., a.k.a. Bricktown-SMC/Hogan, L.L.C., Bricktown-TMK/Hogan Entertainment, L.L.C. a.k.a. Bricktown Entertainment, L.L.C., Mark D. Elgin, Stonegate Management Company, L.L.C., Elgin Development Company, L.L.C. and TDC Company, L.L.C. (collectively, the "Hogan Respondents"), together with Respondent Tiana Douglas, former executive director of the Oklahoma City Urban Renewal Authority ("OCURA"). Petitioners alleged Respondents were liable for conspiracy to fraudulently condemn Tal Tech's land, conspiracy to monopolize under 15 U.S.C. § 2, racketeering under 18 U.S.C. § 1962, and tortious interference with business under Oklahoma common law.

Because the litigation before the federal district court below is but one installment in a series of challenges brought by Tal and various corporate and taxpayer protest group affiliates to the Bricktown redevelopment efforts, a brief description of such challenges, including the federal district court lawsuit which led to the Petition for a Writ of

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22 n.7), Respondent Bricktown-TMK/Hogan Parking, L.L.C. is not a party to the Redevelopment Agreements.

Certiorari now pending, follows to place that Petition in context.

A. The State Court Condemnation Proceeding and Petitioner Tal Tech's State Court Appeal. In March 1997, in furtherance of its urban renewal plan, the City brought a condemnation action, seeking to condemn 1.4 acres owned by Tal Tech adjacent to the Bricktown redevelopment. Tal Tech objected to the condemnation, claiming lack of public necessity or purpose. *City of Oklahoma City v. Tal Tech Inc.*, Case No. 94,045 (Okla.Civ.App. July 31, 2001); *Tal v. Hogan*, 453 F.2d 1244, 1250 (10th Cir. 2006). Overruling the objection, the Oklahoma County district court entered a condemnation order in 1997. In 1999, Tal Tech filed two motions asking the state district court to reconsider the condemnation order, alleging, *inter alia*, that the City's condemnation was fraudulent. That court denied the motions, and Tal Tech appealed to the Oklahoma Court of Civil Appeals, which affirmed the district court's denial of Tal Tech's motions to vacate the condemnation order for fraud. *City of Oklahoma City v. Tal Tech Inc.*, Case No. 94,045 (Okla.Civ.App. July 31, 2001); *Tal*, 453 F.3d at 1250-51. Both the Oklahoma Supreme Court and this Court denied Tal Tech's subsequent petitions for certiorari. *See Tal Techs., Inc. v. City of Okla. City*, Petition for a Writ of Certiorari, No. 01-1147, 2002 WL 32134365 at 1 (Oklahoma Supreme Court's denial of Tal Tech's petition for writ of certiorari was unreported); *Tal Techs., Inc. v. City of Okla. City*, 535 U.S. 987 (2002) ("Petition for writ of certiorari to the Court of Civil Appeals of Oklahoma, Second Division, denied").

B. *Tal I*: Petitioner Tal's First State Court Challenge to the Award of the Redevelopment Agreements. In 1999, Tal and a group of taxpayers he formed

known as Taxpayers Against Ripoffs or "TAR"[2] challenged the award of the Redevelopment Agreements to Respondent TMK/Hogan by delivering to the City a *qui tam* written demand concerning several MAPS-related transactions. Among other things, Tal and TAR demanded that the City declare the Redevelopment Agreements void and illegal and file suit against the parties thereto to recover damages and obtain a judicial declaration of the Redevelopment Agreements' alleged invalidity.

Tal and TAR's challenge was brought pursuant to Oklahoma's *qui tam* statutes, Okla. Stat. Ann., Tit. 62 §§ 372-374, which allow a citizen to bring a suit on behalf of a governmental entity for "the recovery of any money or property belonging to" that entity, but only after the entity has refused, failed, or neglected to institute proceedings for the recovery of its money or property after being served with a written demand by ten resident taxpayers with respect to an "unauthorized, unlawful, fraudulent, or void contract." Okla. Stat. Ann., tit. 62 §§ 372-374.

In response to Tal and TAR's demand, on January 26, 1999, the City filed a declaratory judgment action in Oklahoma County district court against the private parties to the Redevelopment Agreements and OCURA, requesting that, should that court find the Redevelopment Agreements invalid, it declare them void and order the return of money and property involved in the agreements to the City, or should the district court judicially confirm the Redevelopment Agreements' validity, it declare them valid.

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[2] "TAR" became Taxpayers for Honest Government," or "THG." *See Oklahoma City Urban Renewal Authority v. City of Oklahoma City*, 2005 OK 21, n.4, 10 P.3d 550.

The Oklahoma County district court denied Tal and TAR's attempt to intervene in the trial. *Tal I*, 1999 OK 71, 988 P.2d at 905 (public officials responded to taxpayers' written demand in good faith and taxpayers have failed to show grounds to intervene). That court entered a judgment declaring that the Redevelopment Agreements were "valid, lawful and constitutional in all respects and should be enforced." Further, the court entered a permanent injunction, requiring the parties to perform their obligations under the Redevelopment Agreements. The Oklahoma Supreme Court affirmed the district court's denial of Tal and TAR's motion to intervene. *Tal I*, 1999 OK 71, ¶¶ 17, 20, 988 P.2d 901, 906 ("there is nothing in the record to reflect that Oklahoma City acted in bad faith. Its actions were taken under the glare of public scrutiny and were resisted by a significant minority of the City Council.").

C. *Tal II*: Petitioner Tal's Challenges to the Bricktown Ballpark Stadium Leases. Next, Tal and TAR used Oklahoma's *qui tam* statutes to challenge the validity of a lease and sublease related to the new baseball stadium constructed in Bricktown as part of the MAPS projects. *State ex rel. Tal v. Norick*, 1999 OK 85, 991 P.2d 999 ("*Tal II*"). The City responded by filing a declaratory judgment action in Oklahoma County district court; after trial, that court ruled that Tal and TAR's accusations were unsupported, and that the Ballpark lease and sublease were valid and constitutional in all respects. While that declaratory judgment action was still pending, however, Tal and TAR filed an independent *qui tam* action in Oklahoma County district court challenging the leases and requesting treble damages. That independent action was dismissed by the Oklahoma County district court for lack of standing, and the Oklahoma Supreme Court affirmed. *Tal II*, 1999 OK 85, ¶ 9, 991 P.2d at 1001. Several years

later, Tal attempted to revive the same *qui tam* challenge in Oklahoma County district court by seeking to vacate the district court's *Tal II* judgment and filing an independent *qui tam* action. That iteration of Tal's ballpark related *qui tam* challenge was also dismissed, and the dismissal was affirmed on appeal. *See State ex rel. Tal v. Oklahoma City Athletic Club, Inc.*, in the District Court for Oklahoma County, Oklahoma; No. CJ-2003-3176; filed April 14, 2003 and Journal Entry of Judgment dismissing action, filed April 15, 2004.

D. *Tal III*: Petitioner Tal's State Court Lawsuit Attacking the *Tal I* Judgment Which Declared the Redevelopment Agreements to be Valid and Constitutional in All Respects. In March 2000, Tal and TAR sued the City, OCURA, Respondent TMK/Hogan and many others in an Oklahoma County district court *qui tam* action based on the very same *qui tam* challenge resulting in *Tal I*. That court dismissed as to all defendants based on the *Tal I* judgment and appeal, and Tal and TAR once again appealed to the Oklahoma Supreme Court. In *State ex rel. Tal v. City of Oklahoma City*, 2000 OK 70, 19 P.3d 268 (*per curiam*) ("*Tal III*"), the Oklahoma Supreme Court held that Tal and TAR were attempting to relitigate issues "clearly and unequivocally" disposed of in *Tal I*. *See Tal III*, 2000 OK at ¶ 6, 19 P.3d at 272. Tal and TAR's petition for a writ of *certiorari* to this Court was denied. *Oklahoma ex rel. Tal v. City of Okla. City*, 534 U.S. 814 (2001).[3]

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[3] At least three other Oklahoma County district court actions filed by one or more of the Petitioners and related to the MAPS/Bricktown redevelopment projects are pending. First, there is litigation in Oklahoma County district court involving the MAPS related Bass Pro Shops development in Bricktown, resulting from a *qui tam* demand made by Tal and THG. *See Oklahoma City Urban Renewal Authority v. City of Oklahoma City*, CJ-2003-2826, Oklahoma County district court,

(Continued on following page)

E. This Action: Petitioners' Federal Court Litigation. On March 14, 2002, Petitioner Tal and his affiliated corporations Petitioners Tal Tech and BT-2000 filed a complaint in the United States District Court for the Western District of Oklahoma challenging, among other things, the award of the Redevelopment Agreements. Defendants included Tiana Douglas, then executive director of OCURA, and Respondent TMK/Hogan, a party to the Redevelopment Agreements. Among other arguments advanced was that the Redevelopment Agreements were obtained via an anti-competitive conspiracy in violation of federal and state antitrust laws, and that the alleged conspiracy violated the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(b), (c) and (d). Petitioner Tal Tech also alleged that the City's condemnation of the property was fraudulent, and Tal Tech and BT-2000 also alleged that the "fraudulent" condemnation was one predicate act to support their RICO claim. The federal district court dismissed Petitioner Tal's claims in their entirety for lack of standing on October 31, 2001, and dismissed the claims of Petitioners Tal Tech and BT-2000, as amended, on September 20, 2003. Tal and his affiliates appealed the dismissals to the

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2005 OK 2, 110 P.3d 550. Second, there is litigation pending in Oklahoma County district court involving another MAPS related Bricktown redevelopment project, brought by Petitioners Tal and Tal Tech, which includes as one claim yet another Tal Tech challenge to the 1997 condemnation. (Pet. at 7, n.2) Third, there is pending a suit filed by Tal against the Oklahoma County district court judge who presided over the proceedings in *Tal II*, and against numerous attorneys, municipal officials and private parties for, *inter alia*, tortious interference with contract, malicious prosecution and abuse of process. All but one of the defendants have been dismissed based on Tal's failure to state a claim. *See Tal v. Humphreys*, CJ-2003-10498, Oklahoma County District Court.

Tenth Circuit Court of Appeals, which affirmed. *See Tal v. Hogan*, 453 F.3d at 1250. Petitioners' Petition for Rehearing was denied by the federal appellate court on September 11, 2006. Thereafter, Petitioners filed their Petition for a Writ of Certiorari to the Tenth Circuit Court of Appeals which was docketed on December 14, 2006. The Hogan Respondents oppose the granting of certiorari, and respectfully submit this Brief in Opposition.

REASONS FOR DENYING A WRIT OF CERTIORARI

I. CERTIORARI SHOULD BE DENIED BECAUSE PETITIONERS TAL TECH AND BT-2000 FAILED TO DEMONSTRATE THAT THE TENTH CIRCUIT DECIDED A MATTER IN DIRECT CONFLICT WITH DECISIONS OF THIS COURT AND OTHER FEDERAL COURTS, AND THE ISSUE RAISED BY PETITIONERS IS NOT A QUESTION OF FIRST IMPRESSION AND DOES NOT INVOLVE AN IMPORTANT ISSUE OF FEDERAL LAW.

In seeking certiorari, Petitioners Tal Tech and BT-2000 represent that the Tenth Circuit Court of Appeals applied the heightened pleading standard found in Fed.R.Civ.P. 9 to *all* elements of their RICO claim and further argue it as error for that court to do so. (Pet. at 11, 18-19) Instead, Petitioners Tal Tech and BT-2000 argue, the Fed.R.Civ.P. 8(a) notice pleading standard should have been applied to each element of their RICO claim. (Pet. at 11) For the following reasons, Petitioners Tal Tech and BT-2000's request for certiorari on those grounds should be denied. First, the Tenth Circuit Court of Appeals did not apply Rule 9's heightened pleading standard to any element of Petitioners' RICO claim, other than those involving wire fraud or mail fraud. Second, the application

of Rule 9's heightened pleading standard to the wire fraud and mail fraud elements did not result in the dismissal of Petitioners' Second Amended Complaint. Third, Petitioners have failed to demonstrate that the decision of the federal appellate court was in conflict with a decision of this Court or any other federal circuit court.

A. Summary of the Tenth Circuit's Decision with Respect to the RICO Claim.

The Tenth Circuit Court of Appeals properly identified the four elements of Petitioners Tal Tech and BT-2000's RICO claim: "(1) investment in, control of, or conduct of (2) an enterprise (3) through a pattern (4) of racketeering activity." *Tal v. Hogan*, 453 F.3d at 1261 (*citing* 18 U.S.C. § 1962(a), (b), & (c)). The court explained that "[r]acketeering activity" is defined as "any 'act which is indictable' under federal law and specifically includes mail fraud, wire fraud and racketeering."[4] *Id.*

In determining the sufficiency of Petitioners' Second Amended Complaint,[5] the court focused on the fourth element of Petitioner's RICO claim and examined Petitioners' allegations that Respondents "engaged in predicate acts of mail fraud in violation of 18 U.S.C. § 1341, wire fraud in violation of 18 U.S.C. § 1343 and bribery in violation of 18 U.S.C. § 201." *Id.* at 1262.

The federal appellate court applied Rule 9's heightened pleading standard to the allegations of mail fraud

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[4] The court noted that these underlying acts are often called "predicate acts" because "they form the basis for liability under RICO." *Id.* at 1261 (*citing BankOklahoma Mortgage Corp. v. Capital Title Co.*, 194 F.3d 1089, 1102 (10th Cir. 1999)).

[5] Petitioner Tal's RICO claim was dismissed with prejudice by the federal district court.

and wire fraud and determined that Petitioners Tal Tech and BT-2000 adequately alleged two instances of mail fraud, *Id.* at 1265-66, and three instances of wire fraud, *Id.* at 1266.[6] The court recited that Petitioners Tal Tech and BT-2000 "conceded to the district court that they could not state a claim against Douglas under the federal anti-bribery statute" because there was no allegation that she was acting on behalf of the federal government. *Id.* at 1267. Thus, the court found Petitioners Tal Tech and BT-2000 failed to sufficiently allege bribery as a predicate act. *Id.* Thereafter, the appellate court "assume[d] for purposes of [its] opinion that the predicate acts alleged by [BT-2000 and Tal Tech] establish[ed] a pattern of racketeering activity." *Id.* at 1268.

The appellate court next considered whether the pattern of racketeering activity it assumed to exist was sufficient to state a claim under 18 U.S.C. § 1962(b), (c) or (d). *Id.* In doing so, the court found Petitioners' allegations insufficient under § 1962(b) because Petitioners Tal Tech. and BT-2000 "did not adequately allege the defendants acquired or maintained an interest in or control of the Renewal Authority or the city council." *Id.* at 1269. The court found Petitioners' § 1962(c) claim failed because Petitioners' failed to allege that the acts of mail and wire fraud allowed the Respondents to participate "in the operation or management of the Renewal Authority and the city council." *Id.* at 1270. Finally, the appellate court concluded that because Petitioners "failed to allege a

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[6] The Hogan Respondents deny, as they did in the lower courts, that they committed any acts constituting mail fraud or wire fraud. They simply acknowledge that for purposes of their Rule 12(b)(6) motion to dismiss, the untested allegations of Petitioners' Second Amended Complaint are, according to the appellate court, sufficient to withstand a motion to dismiss.

sufficient claim under subsections (b) or (c), their subsection (d) conspiracy fail[ed] as a matter of law." *Id.*

B. Application of Rule 9 to Petitioners' Second Amended Complaint.

As set forth above, Petitioners Tal Tech and BT-2000 allege that the federal appellate court applied "the heightened pleading requirement of Fed.R.Civ.P. 9(b) [to] all elements of RICO alleged in a complaint." (Pet. at 14) Petitioners Tal Tech and BT-2000's position finds no support in the record that is before this Court or in the decision of the Tenth Circuit Court of Appeals.

In attempting to state a RICO claim, Petitioners Tal Tech and BT-2000 alleged that "Defendants engaged in predicate acts of mail fraud, wire fraud and bribery." *Tal*, 453 F.3d at 1263. In reviewing the district court's dismissal of the RICO claim, the Tenth Circuit Court of Appeals held that "[t]he particularity requirement of Rule 9(b), Federal Rules of Civil Procedure, applies to claims of mail and wire fraud."[7] *Id.* (*citing Robbins v. Wilkie*, 300 F.3d 1208, 122 (10th Cir. 2002); *Farlow v. Peat, Marwick, Mitchell & Co.*, 956 F.2d 982, 989-90 (10th Cir. 1992); *Cayman Exploration Corp. v. United Gas Pipe Line Co.*, 873 F.2d 1357, 1362 (10th Cir. 1989)). Thus, the appellate court applied Rule 9's heightened pleading standard only to Petitioners' allegations of wire fraud and mail fraud. *Id.* All of the other elements of Petitioners' RICO claim which were discussed by the appellate court were reviewed based

[7] As discussed below, Petitioners Tal Tech and BT-2000 acknowledge and concede that Rule 9's heightened pleading standard is applicable to allegations of fraud: "Where a predicate act for purposes of RICO does not sound in fraud, a RICO claimant need only comply with the general pleading requirements of Rule 8(e)(1) and not the heightened pleading requirements of Rule 9(b)." (Pet. at 16-17)

on the notice pleading standard of Fed.R.Civ.P. 8(a). *Id.* at 1268-70.

On this point, the appellate court's decision is wholly consistent with prior decisions of that court. Specifically, the Tenth Circuit's decision to apply the heightened pleading standard of Fed.R.Civ.P. 9(b) to determine the sufficiency of an allegation of mail fraud and wire fraud when those acts are relied on as the predicate acts in a RICO case, finds support in sixteen years of unwavering precedent. *See Robbins*, 300 F.3d at 1211 (noting Rule 8 applied to all elements of a RICO claim except for "acts predicated upon fraud"); *Farlow*, 956 F.2d at 989-90 ("plaintiffs must sufficiently allege . . . predicate acts of racketeering with particularity"); and *Cayman*, 873 F.2d at 1362 ("Rule 9(b) requires particularity in pleading RICO mail and wire fraud.").

Moreover, Petitioners have failed to demonstrate that the federal appellate court's decision is contrary to a decision from this Court. Although Petitioners cite two cases which reject – in different situations – the application of Rule 9's heightened pleading standard, *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506 (2002) and *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993). Neither of those cases compels a result different than that reached by the Tenth Circuit. In *Swierkiewicz*, this Court rejected the Second Circuit Court of Appeals' requirement that a plaintiff in an employment discrimination case "plead a prima facie case of discrimination in order to survive respondent's motion to dismiss." *Id.* at 510. The Court's rationale was four-fold. First, the *McDonnell Douglas*[8] prima facie case "is an evidentiary standard, not a pleading requirement. *Id.* at 510. Second,

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[8] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

the Court noted that requiring "a plaintiff to plead facts establishing a prima facie case" is inappropriate "because the *McDonnell Douglas* framework does not apply in every employment discrimination case." *Id.* at 511. Third, the Court reiterated that "the precise requirements of a prima facie case can vary depending upon the context." *Id.* at 512. Finally, this Court noted that employment discrimination claims were not the type of claims that are specifically exempted by Fed.R.Civ.P. 9(b) from the "short and plain statement" requirement of Fed.R.Civ.P. 8. *Id.* at 512-13, 515.

The second case cited by Petitioners Tal Tech and BT-2000 is likewise inapposite. In *Leatherman*, the Court was called to review a decision of the Fifth Circuit Court of Appeals which had applied a heightened pleading standard to judge the sufficiency of a complaint alleging municipal liability under 42 U.S.C. § 1983. *Id.* at 164. In rejecting the more stringent standard applied by the Fifth Circuit, this Court stated: "We think that it is impossible to square the 'heightened pleading standard' applied by the Fifth Circuit . . . with the liberal system of 'notice pleading' set up by the Federal Rules." *Id.* at 168. In both cases, however, this Court noted that a heightened pleading standard was applied appropriately to actions sounding in fraud. *Swierkiewicz*, 534 U.S. at 513; *Leatherman*, 507 U.S. at 168. As noted above, the Tenth Circuit below limited its application of the heightened pleading standard of Fed.R.Civ.P. 9(b) to Petitioners Tal Tech and BT-2000's "claims of mail and wire fraud." *Tal*, 453 F.3d 1244.

Although not cited by Petitioners Tal Tech and BT-2000, the Hogan Respondents note that the decision of the Tenth Circuit at issue herein is consistent with this Court's discussion of Rule 9 and its potential application to the fraud elements of RICO claims. *See Rotella v. Wood*,

528 U.S. 549 (2000) (assuming Rule 9 will "exact some cost" on plaintiffs attempting to plead a RICO claim).

Finally, the application of the heightened pleading standard of Fed.R.Civ.P. 9(b) to determine the sufficiency of the pleading of the predicate acts of mail fraud and wire fraud in a RICO case does not conflict with any decision cited by Petitioners Tal Tech and BT-2000. Rather, the Tenth Circuit Court of Appeals' decision on this point is wholly consistent with all of the federal appellate courts[9] that have addressed the issue: *First Capital Asset Mgmt., Inc. v. Satinwood*, 385 F.3d 159, 178-79 (2nd Cir. 2004); *Lum v. Bank of America*, 361 F.3d 217, 223 (3rd Cir. 2004); *Abels v. Farmers Commodities Corp.*, 259 F.3d 910, 921 (8th Cir. 2001); *Ahmed v. Rosenblatt*, 118 F.3d 886, 889 (1st Cir. 1997); *Brooks v. Blue Cross and Blue Shield of Florida, Inc.*, 116 F.3d 1364, 1380-81 (11th Cir. 1997); *McDonald v. Schenecker*, 18 F.3d 491, 495 (7th Cir. 1994); *Tel-Phonic Services, Inc. v. TBS Intern., Inc.*, 975 F.2d 1134, 1138-39 (5th Cir. 1992); *Lancaster Commun. Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 405 (9th Cir.

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[9] Hogan Respondents note that none of the cases cited by Petitioners Tal Tech and BT-2000 in their Petition demonstrate that the Tenth Circuit Court of Appeals erred by applying Fed.R.Civ.P. 9(b) to determine the sufficiency of the allegations of mail fraud and wire fraud in the Second Amended Complaint. For example, Petitioners cite *Haroco, Inc. v. American National Bank & Trust of Chicago*, 747 F.2d 384, 404-05 (7th Cir. 1984); *Otto v. Variable Annuity Life Insurance*, 814 F.2d 1127, 1136 (7th Cir. 1986); *United States v. Neopolitan*, 791 F.2d 489, 499-500 (7th Cir. 1986) (since this case was a criminal prosecution, neither Fed.R.Civ.P. 8 nor 9(b) would apply); and *Westways World Travel v. AMR Corp.*, 182 F.Supp. 2d 952, 955 (C.D. Cal. 2001). None of those cases discuss, much less reject, the application of Fed.R.Civ.P. 9(b) to allegations of mail fraud and wire fraud. However, as noted herein, both the Seventh and the Ninth Circuit Courts of Appeals have found that the heightened pleading standard of Rule 9(b) should be applied to the allegations of mail fraud and wire fraud in a RICO case.

1991); *Cayman*, 873 F.3d at 1362 (cataloging cases); *Michael Building Co. v. Ameritrust Co., N.A.*, 848 F.2d 674, 679 (6th Cir. 1988); and *Formax, Inc. v. Hostert*, 841 F.2d 388, 391 (C.A. Fed. 1988) (applying Seventh Circuit's approach).

Accordingly, as Petitioners Tal Tech and BT-2000 have failed to demonstrate that the Tenth Circuit Court of Appeals' decision conflicts with any decision of this Court or any decision of another circuit court and because the Tenth Circuit Court of Appeals' decision rests squarely on the plain language of Fed.R.Civ.P. 9(b), this Court should decline to grant certiorari review.

C. Petitioners Confess Rule 9's Heightened Pleading Standard is Applicable to the Predicate Acts of Mail Fraud and Wire Fraud.

As discussed above, the Tenth Circuit Court of Appeals applied Rule 9's heightened pleading standard to only two matters: the factual allegations supporting Petitioners Tal Tech and BT-2000's allegations of mail fraud and wire fraud. *Tal*, 453 F.3d at 1263. Petitioners, in their Petition for a Writ of Certiorari, admit that the "heightened standard of pleading" is properly applied to their "claims for the predicate acts of fraud." (Pet. at 14, 16-17, 18) Thus, by their own admission, the Tenth Circuit Court of Appeals properly applied Rule 9 to their RICO claim to the extent that claim was predicated on alleged acts of mail fraud and wire fraud. Accordingly, this Court should decline to grant certiorari review.

D. The Appellate Court's Application of Rule 9 did not Result in the Dismissal of Petitioners Tal Tech and BT-2000's RICO Claims.

Petitioners Tal Tech and BT-2000 are correct to the extent they claim the Tenth Circuit Court of Appeals

applied Rule 9 to their claims of mail fraud and wire fraud. *Tal*, 453 F.3d at 1263-67. However, that court's application of the heightened pleading standard, which they claim is error, did not result in the dismissal of Petitioners' Second Amended Complaint.[10] Rather, in applying Rule 9, the appellate court reversed the district court and found that Petitioners "sufficiently alleged" two acts of mail fraud – "the alleged 'Torchmark misrepresentation,'" *Id.* at 1266, and the May 18, 1998 letter authored by Mr. Tolbert, *Id.* The appellate court also found that Petitioners sufficiently alleged three instances of wire fraud. *Id.* Finally, the court presumed, for purposes of its opinion, that the acts of alleged mail fraud and wire fraud "establish a pattern of racketeering activity." *Id.* at 1268.[11] Thus, in the only instance where the appellate court applied Rule 9's heightened pleading standard, that court found the allegations of the Second Amended Complaint sufficient to withstand the motion to dismiss. Therefore, the error of which Petitioners Tal Tech and BT-2000 complain – the application of Rule 9 – did not result in the dismissal of their Second Amended Complaint. Accordingly, this Court should decline to grant certiorari review.

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[10] In a different subpart of their *Petition*, Petitioners Tal Tech and BT-2000 admit as much. (Pet. at 18)

[11] Petitioners Tal Tech and BT-2000's discussion of the application of Rule 9 to the allegations regarding the existence of an "enterprise" (Pet. at 16-17) is inapposite as the federal appellate court did not consider or decide whether Petitioners Tal Tech and BT-2000 sufficiently identified an enterprise. Stated differently, the existence or non-existence of an enterprise was not a matter explicitly or implicitly encompassed by the appellate court's decision. *Tal*, 453 F.3d at 1261-70.

II. CERTIORARI SHOULD BE DENIED BECAUSE PETITIONERS TAL TECH AND BT-2000 CONCEDED THEIR FAILURE TO STATE A CLAIM UNDER 18 U.S.C. § 201 TO THE DISTRICT COURT AND DID NOT SEEK LEAVE, FROM THAT COURT, TO FILE A THIRD AMENDED COMPLAINT TO ATTEMPT TO STATE A DIFFERENT BRIBERY CLAIM.

Petitioners Tal Tech and BT-2000 argue that the appellate court erred in affirming the district court's dismissal of their RICO claim because their allegations of bribery were sufficient, under Fed.R.Civ.P. 8 to state a bribery claim under Okla. Stat. Ann., tit. 21 § 381. (Pet. at 18-19) In doing so, however, Petitioners Tal Tech and BT-2000 ignore the plain language of their Second Amended Complaint; ignore their admissions and concessions made to the district court; ignore their failure to request leave from the district court to file a third amended complaint; and ignore the legal authority underlying the appellate court's determination.

Initially, the Hogan Respondents note that the language of Petitioners Tal Tech and BT-2000's Second Amended Complaint was very specific when it alleged that the Defendants committed bribery in violation of 18 U.S.C. § 201 (Pet. App., pp. 162-65, ¶179) Thus, by the very specific language of that pleading, Petitioners limited their bribery claim to one arising under § 201.

Next, in *Plaintiffs' Combined Response to All Defendants' Motions to Dismiss*, Petitioners Tal Tech and BT-2000 conceded that a claim against Respondent Douglas was not (and could not be) stated under the federal anti-bribery statute, 18 U.S.C. § 201. (Pet. App. at 61, 334); *Tal*, 453 F.3d at 1267. Counsel argued, however, that Petitioners Tal Tech and BT-2000 stated a claim for bribery under Okla. Stat. Ann., tit. 21 § 381. (*Id.*) However, at no time

did Petitioners Tal Tech and BT-2000 request leave of the district court to file a third amended complaint "in order to allege a violation of a state anti-bribery statute." *Tal*, 453 F.3d at 1267. (Pet. App. at 61) It was not until after judgment was entered by the district court and Petitioners Tal Tech and BT-2000 filed their brief in chief in the appellate court that they requested the federal appellate court grant them leave to file a third amended complaint "to amend and clarify" any "unclear allegations" which may be pointed out to them by the appellate court. *Tal*, 453 F.3d at 1267.

While Petitioners Tal Tech and BT-2000 attempt to twist the district court's dismissal and the appellate court's decision into one relating to the adequacy of their pleading (Pet. at 18-19), that is simply not a fair reading of the district and appellate courts' decisions. Rather, the only reviewable issue encompassed by the appellate court's decision is whether it was error for the appellate court to require Petitioners Tal Tech and BT-2000 to move in the district court to amend their pleading instead of moving to amend, for the first time, in the appellate court. *Tal*, 453 F.3d at 1267.

In this vein, the Hogan Respondents note that it is well settled that a party is required to move in the district court to amend its pleading, either a complaint or an answer, rather than to move to amend for the first time in the appellate court after judgment has been entered. *The Tool Box, Inc. v. Ogden City Corp.*, 419 F.3d 1084, 1088 (10th Cir. 2005) (collecting cases).

Accordingly, as Petitioners Tal Tech and BT-2000 have failed to demonstrate any error arising from the appellate court's decision with respect to the dismissal of their bribery claim, this Court should decline to grant certiorari.

III. CERTIORARI SHOULD BE DENIED BECAUSE PETITIONER TAL HAS FAILED TO DEMONSTRATE REVERSIBLE ERROR IN THE APPELLATE COURT'S DECISION TO AFFIRM DISMISSAL OF HIS INDIVIDUAL CLAIMS.

In the final section of the Petition, Petitioner Tal argues the appellate court erred by finding his personal causes of action are barred by *res judicata* as a result of his participation as a *qui tam* relator in prior litigation. (Pet. at 25-30) In doing so, however, Petitioner Tal admits that "the Tenth Circuit did not address the *res judicata* issues against Moshe Tal even though the issues were well-briefed in his Opening Brief and the Joint Petition for Rehearing." (Pet. at 25, n.12) Rather, Petitioner Tal, who appears before this Court *pro se*, assumes the appellate court "in effect" affirmed the district court's ruling on the issue of *res judicata* even though that court never mentioned, discussed or analyzed the *res judicata* issue. (Pet. at 25, n.12) However, on this point, Petitioner Tal's assumption is clearly belied by the record.

In its opinion, the appellate court stated: "The district court dismissed Tal's individual antitrust and RICO claims in the First Amended Complaint for lack of standing."[12] *Tal*, 453 F.3d at 1252. That description of the basis of the district court's dismissal is borne out by a review of the record. In his October 31, 2002, Enter Order, Judge Friot ruled that Petitioner Tal's claims should be denied because he lacked standing. (Pet. App. at 79) Judge

[12] For the record, the Hogan Respondents note that the appellate court affirmed the dismissal of Petitioner Tal's individual claims on the same basis set forth by the district court in its October 31, 2002, Enter Order: a lack of standing. *Tal*, 453 F.3d at 1253-54.

Friot's dismissal of Petitioner Tal's individual claims was not based on *res judicata*.[13] *Id.*

Accordingly, because Petitioner Tal devotes more than four pages of his request for certiorari to arguing an issue not decided by the appellate court, this Court should decline to grant certiorari review. *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 109 (2001) ("We ordinarily do not decide in the first instance issues not decided below.").

IV. CERTIORARI SHOULD BE DENIED BECAUSE PETITIONER TAL HAS NOT APPEALED THE FINDING THAT HE LACKS STANDING TO PURSUE HIS INDIVIDUAL RICO AND ANTI-TRUST CLAIMS.

The federal appellate court affirmed the dismissal of Petitioner Tal's individual claims because that court agreed that he "does not have standing to assert his individual RICO and antitrust claims." *Tal*, 453 F.3d at 1254. Petitioner Tal has not sought review of that ruling. Accordingly, as the issue of whether Petitioner Tal lacks standing is a final decision, a reversal of the *res judicata*

[13] The Hogan Respondents acknowledge that the district judge's oral announcement of his anticipated ruling mentioned *res judicata* as a possible basis for the dismissal of Petitioner Tal's claims. However, the Enter Order the district judge caused to be filed in the case stated only *one* basis for the dismissal of Petitioner Tal's claims: a lack of standing. (Pet. App. at 79) Accordingly, as that is the only basis for the dismissal found in the federal district court's written order, it was the only basis considered on appeal by the Tenth Circuit Court of Appeals. *Tal*, 453 F.3d at 1252. Moreover, it is the uniform rule that in civil matters, oral rulings are superseded by the courts' written orders. *See O'Neill v. AWGI Lines*, 74 F.3d 93, 95 (5th Cir. 1996) (appellate court does not consider district court's oral statements as to grounds for ruling to the extent they conflict with grounds contained in the subsequent written order).

issue would not result in a reinstatement of Petitioner's Tal's claims. Rather, even if his claims were not barred by *res judicata* (an issue never decided by the appellate court), the decision that he lacks Article III standing, *id.*, would bar his pursuit of those claims. As such, this Court should decline to grant certiorari review.

V. CERTIORARI SHOULD BE DENIED BECAUSE PETITIONERS TAL TECH AND BT-2000 FAILED TO DEMONSTRATE THAT THE TENTH CIRCUIT APPLIED THE *ROOKER-FELDMAN* DOCTRINE IN CONFLICT WITH A DECISION OF THIS COURT AND OTHER FEDERAL COURTS, AND THE ISSUE RAISED BY PETITIONERS DOES NOT INVOLVE AN IMPORTANT ISSUE OF FEDERAL LAW.

Petitioner Tal Tech contends that the federal appellate court erred in affirming dismissal of Tal Tech's fraudulent condemnation claim as barred by the *Rooker-Feldman* doctrine. (Pet. at 20-21) In that regard, Petitioner Tal Tech argues that the appellate court erred because, although Tal Tech has exhausted its state court appellate remedies with respect to any challenge to the propriety of the condemnation itself, resulting in a fully final state court judgment as to the propriety of the condemnation, there remains pending Tal Tech's demand for a jury trial as to the *size* of the resulting condemnation award, as well as Tal Tech's new state court challenge to the Oklahoma County district court judgment that the condemnation was proper. (Pet. at 24-25) Further, Petitioners Tal Tech and BT-2000 allege that the federal appellate court wrongly applied *Rooker-Feldman* via privity to prevent Tal Tech and BT-2000 from both 1) bringing a claim for fraudulent condemnation and 2) using fraudulent condemnation as a predicate act to support their respective RICO claims.

For the following reasons, Petitioners Tal Tech and BT-2000's request for certiorari on those grounds should be denied.

A. Application of *Rooker-Feldman* Doctrine to Tal Tech's Fraudulent Condemnation claim.

1. Summary of Tenth Circuit's decision with respect to Tal Tech's fraudulent condemnation claim.

The Tenth Circuit Court of Appeals applied the *Rooker-Feldman* doctrine to Petitioner Tal Tech's fraudulent condemnation claim because Tal Tech, which as owner of the property condemned was the only party with standing to challenge the propriety of the 1997 Oklahoma County district court condemnation judgment, had previously unsuccessfully challenged the condemnation judgment as improper and fraudulent, and the resulting state court judgment was final. *Tal*, 453 F.3d at 1256. Further, the federal appellate court applied the *Rooker-Feldman* doctrine to Tal Tech's attempt to use the fraudulent condemnation claim to serve as a predicate act to support Tal Tech's RICO claim. *Id.* at 1263.

2. The Tenth Circuit did not use the concept of privity to extend application of *Rooker-Feldman* to non-parties to prior litigation.

Petitioners further claim (Pet. at 21) that the federal appellate court "erred in using the concept of privity" in its application of the *Rooker-Feldman* doctrine. In this regard, Petitioners claim the federal appellate court used a prior judgment entered in a state court *qui tam* proceeding

known as *Tal I*,[14] as the basis for its *Rooker-Feldman* holding, despite the fact that neither Tal Tech nor BT-2000 were parties to the *Tal I* litigation. (Pet. at 20-23) Hogan Respondents point out that, to the contrary, the federal appellate court based application of the *Rooker-Feldman* doctrine on Tal Tech's prior final Oklahoma County district court condemnation judgment.[15] Specifically, the federal appellate court ruled that the finality of Tal Tech's unfavorable Oklahoma County district court condemnation judgment precluded an "appeal" or collateral attack on that state court judgment in the lower federal courts. *Tal*, 453 F.3d at 1250-51, 1256-57. Further, the *Rooker-Feldman* holding was only against Petitioner Tal Tech's claims. *Id.* As Tal Tech was a party to the Oklahoma County district court condemnation action, the appellate court did not rely on a privity finding in applying *Rooker-Feldman*.

On this point, Petitioners Tal Tech and BT-2000 do not dispute that, in the Oklahoma County district court condemnation action, Tal Tech "objected to the condemnation, challenging the public necessity of the taking," and that the "trial court overruled [Tal Tech's] objection and entered a condemnation order on August 28, 1997. . . . " *Id.* at 1250. Likewise, Petitioners do not challenge the fact that "[o]n September 28 and November 2, 1999, almost two years after entry of the condemnation order, [Tal Tech] filed two motions to reconsider the condemnation order based on newly discovered evidence. . . . [claiming] the City had fraudulently deceived the court and delivered the

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[14] See discussion of *Tal I* at pages 3-5, *supra*.

[15] The federal district court's reference to the *qui tam* action known as *Tal I* was made simply to document that the property condemned was part of a parcel ultimately sold by OCURA for fair market value. *Id.* at 1256.

land to the Renewal Authority for sale to private developers, which [Tal Tech] argued was a non-public use." *Id.* at 1251. Finally, Petitioners do not challenge the fact that Tal Tech "appealed to the Oklahoma Court of Civil Appeals" which affirmed the condemnation order after "construing the appeal as alleging that the City had obtained the condemnation order by fraud." *Id.*, *citing City of Oklahoma City v. Tal Techs., Inc.*, Case No. 94,045 (Okla. Civ. App. July 31, 2001). Nor do Petitioners dispute that this Court denied Tal Tech's subsequent certiorari petition. *See Tal Techs., Inc. v. City of Okla. City*, 535 U.S. 987 (2002) ("Petition for writ of certiorari to the Court of Civil Appeals of Oklahoma, Second Division, denied"). In fact, Petitioners concede that "there was an interlocutory appeal of the judgment holding that the condemnation was for a proper public purpose." (Pet. at 24)

It was the resulting final 1997 condemnation order that the Tenth Circuit Court of Appeals ruled could not be subsequently challenged in the lower federal courts, stating that "the district court correctly concluded that the *Rooker-Feldman* doctrine precluded [Tal Tech's] condemnation claim in federal court. Oklahoma courts squarely rejected [Tal Tech's] claims that the initial condemnation order had been obtained through fraud on the part of the City. . . . " *Tal*, 453 F.3d at 1256. Plainly, the federal appellate court used the final state court condemnation order as the basis for application of *Rooker-Feldman*, not the state court opinion in *Tal I*.

Further, Petitioners misrepresent, or at best, misapprehend, both the federal appellate court's ruling with respect to *Rooker-Feldman* and this Court's opinion in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005). Contrary to Petitioners' argument, this Court's opinion in *Exxon Mobil* is entirely consistent with the Tenth Circuit's application of *Rooker-Feldman*.

In *Exxon Mo* this Court held that the *Rooker-Feldman* doctrine is limited to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the [federal] district court proceedings commenced and inviting district court review and rejection of those judgments." 544 U.S. at 284.

Hogan Respondents point out that Tal Tech precisely fits the definition of the "state-court loser" set out in *Exxon Mobil* as the proper subject of the jurisdictional bar imposed by *Rooker-Feldman*. Tal Tech contested the condemnation judgment in 1997 before the Oklahoma County district court and lost, appealed the condemnation order to the Oklahoma Court of Civil Appeals as fraudulent and lost, sought certiorari review in the Oklahoma Supreme Court without success, and finally was denied certiorari review by this Court. *City of Okla. City v. Tal Techs., Inc.*, Case No. 94,045 (Okla. Civ. App. July 31, 2001); *Tal Techs., Inc. v. City of Okla. City*, 535 U.S. 987 (2002); *Tal*, 453 F.3d at 1251.

Finally, Hogan Respondents concede that this Court's decision in *Lance v. Dennis* held that, in general, the *Rooker-Feldman* doctrine does not deprive a federal court of jurisdiction over claims of parties who were neither party to the pertinent state court action nor in a position to appeal and seek review of the state court's judgment. 126 S.Ct. 1198, 1202-03 (2006). However, wholly consistent with *Lance*, here the federal appellate court held that it lacked subject matter jurisdiction only as to the claim of Tal Tech, which was a party to and did appeal the Oklahoma County district court condemnation judgment. *City of Okla. City v. Tal Techs., Inc.*, Case No. 94,045 (Okla. Civ. App. July 31, 2001); *Tal*, 453 F.3d at 1256-57. Stated conversely, the Tenth Circuit Court of Appeals did not rely upon *Rooker-Feldman* to affirm dismissal of any claim of

Petitioner BT-2000. *Id.* Petitioners have not stated a ground for the grant of certiorari.

B. The Tenth Circuit's Treatment of Petitioners Tal Tech and BT-2000's Attempt to Use Tal Tech's Allegation of Fraudulent Condemnation to Establish a Predicate Act Necessary to Support their RICO Claim.

Petitioners argue further that the federal appellate court improperly applied the *Rooker-Feldman* doctrine to bar BT-2000's attempt to use the allegedly fraudulent condemnation of Tal Tech's property as a predicate act to support BT-2000's RICO claim. BT-2000 contends that as a non-party to the condemnation action, BT-2000 cannot be subject to the *Rooker-Feldman* bar under *Lance*, supra., and *Mo's Express, LLC v. Sopkin*, 441 F.3d 1229 (10th Cir. 2006). (Pet. at 21)

Again, Hogan Respondents concede that this Court held in *Lance* that litigants not party to the prior state court action raising the same issue are generally not subject to *Rooker-Feldman*, as discussed above. Here, however, the federal appellate court did not employ the *Rooker-Feldman* doctrine to reject BT-2000's use of the fraudulent condemnation argument as a predicate act to support its RICO claim. Rather, that court rejected BT-2000's attempt to use the "fraudulent condemnation" allegation as a RICO predicate act because "the City, which was responsible for the condemnation, is not a named defendant but is the alleged 'enterprise.'" *Id.* at 1263 n.19 (citations omitted).[16] Thus, the federal appellate

[16] Hogan Respondents note that Petitioners concede that the City and OCURA were named as the "enterprise" for purposes of Petitioners' RICO claim. (Pet. at 3)

court's treatment of BT-2000's attempt to use the fraudulent condemnation argument as a prop for its RICO claim was wholly consistent with, not violative of, both *Lance* and *Mo's Express*.

C. The Tenth Circuit's Application of the *Rooker-Feldman* Doctrine is not in Direct Conflict with a Decision of this Court or Other Federal Courts.

Petitioners contend that because Tal Tech has not yet set a date for the trial of its challenge to the *amount* of the condemnation award, the 1997 state court condemnation judgment is "pending" in a manner that, under *Exxon Mobil*, should have prevented application of the *Rooker-Feldman* doctrine below despite finality of the Oklahoma County district court condemnation judgment itself. (Pet. at 24)

Hogan Respondents counter that Tal Tech's challenge to the Oklahoma County district court's condemnation judgment was not "pending" under *Exxon Mobil* when Tal Tech brought the action below. Rather, the condemnation judgment was a final order because Tal Tech had as of that date challenged the validity of the condemnation judgment to the fullest extent allowed under Oklahoma and federal law. Specifically, Tal Tech challenged propriety of the condemnation in the initial proceeding, sought to vacate the resultant condemnation judgment for fraud under Okla. Stat. Ann. tit. 12 § 1031.1 in the Oklahoma County district court, appealed the Oklahoma County district court's denial of Tal Tech's fraud challenge to the Oklahoma Court of Civil Appeals, and then unsuccessfully sought certiorari review in both the highest state appellate court and this Court. *City of Okla. City v. Tal Techs., Inc.*, Case No. 94,045 (Okla. Civ. App. July 31, 2001); *Tal Techs.*,

Inc. v. City of Okla. City, 535 U.S. 987 (2002); *Tal*, 453 F.3d at 1251. Under Oklahoma law, the propriety of the resulting state court condemnation judgment is therefore unassailable as the law of the case. *Estate of Severns v. Severns*, 1982 OK 64, 650 P.2d 854.[17] The Oklahoma County district court condemnation judgment is thus final for purposes of the application of the *Rooker-Feldman* doctrine.[18]

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[17] Further, Tal Tech's access to the federal judiciary to challenge the Oklahoma County district court condemnation judgment was limited to seeking the United States Supreme Court's review of the opinion of the Oklahoma Court of Civil Appeals via certiorari, 28 U.S.C. § 1257(a), which as previously noted, it did. Finally, the issues raised by Tal Tech herein are based on the same facts underlying the prior petition for certiorari filed with this Court by Tal Tech. See *Tal Techs., Inc. v. City of Okla. City*, Petition for a Writ of Certiorari, No. 01-1147, 2002 WL 32134365.

[18] Petitioners also imply there was error in the federal appellate court's dictum with respect to the Oklahoma County district court's determination that the City's condemnation of Tal Tech's property was for a "public use." Specifically, Petitioners claim the Oklahoma County district court's "public use" finding conflicts with several decisions of the Oklahoma Supreme Court. (Pet. at 6, n.1, 24, n.11); see *Tal*, 543 F.3d at 1257. Hogan Respondents counter that Petitioners' argument does not support a grant of certiorari. First, as noted, the statement by the federal appellate court was dictum. *Id.* Second, the opinions cited by Petitioners were issued by the Oklahoma Supreme Court, not a federal court. Thus, whether the Oklahoma County district court's condemnation judgment complied with Oklahoma common law does not raise an important issue of federal law. Third, Tal Tech concedes it is a party to pending Oklahoma state court challenging the condemnation on these same grounds. (Pet. 7, n.2, 24, n.10) The proper forum for challenging the compliance of the Oklahoma County district court's condemnation judgment with state law is an Oklahoma state court. See *Chandler v. Florida*, 449 U.S. 560, 570 (1981) (United States Supreme Court has no supervisory jurisdiction over state courts and, in reviewing state court judgment, is confined to evaluating it in relation to United States Constitution). In this regard, Hogan Respondents point out that Tal Tech has already been denied certiorari review of its claim that the Oklahoma County district court's condemnation judgment violated the

(Continued on following page)

Petitioners next contend that the federal appellate court's application of *Rooker-Feldman* conflicts with *Exxon Mobil* because Tal Tech has filed yet another state court action seeking to vacate the Oklahoma County district court's condemnation judgment, which challenge was filed after the date of the federal district court order dismissing Petitioners' claims below. (Pet. at 7 n.2, 24 n.10) Hogan Respondents point out that a *subsequent* suit challenging a state court judgment is not the type of pending parallel proceeding contemplated in *Exxon Mobil*. Rather, *Exxon Mobil* states that, if the same claim is pending *simultaneously* in state and federal fora, the fact that the state court entered judgment first would not automatically deprive the federal court of subject matter jurisdiction. *Exxon Mobil*, 544 U.S. at 292. Accordingly, Petitioner Tal Tech's now pending action to vacate, filed in Oklahoma County district court *after* the federal district court dismissed the fraudulent condemnation claims raised below (Pet. at 24 n.10), does not implicate the concerns addressed in *Exxon Mobil*. This Court should therefore decline to grant certiorari.

United States Constitution. See discussion and citation at note 17, *supra*. Petitioners' allegations do not support a grant of certiorari here.

CONCLUSION

For the reasons set forth above, the Petition for Certiorari to the Tenth Circuit Court of Appeals has not established any ground for the granting of certiorari in this matter and the Petition should be denied.

Respectfully submitted,

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REPLY BRIEF

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SUPREME COURT, U.S

No. 06-823

IN THE

Supreme Court of the United States

MOSHE TAL; BRICKTOWN 2000, INC.;and TAL TECHNOLOGIES, INC.,

Petitioners,

v.

DAN RANDOLPH HOGAN; TMK/HOGAN JOINT VENTURE, a.k.a. COMMERCIAL REAL ESTATE SERVICES JOINT VENTURE; HOGAN PROPERTY MANAGEMENT, L.L.C.; BRICKTOWN-TMK/ HOGAN PARKING, L.L.C.; BRICKTOWN-TMK/HOGAN ENTERTAINMENT, L.L.C.; MARK D. ELGIN; STONEGATE MANAGEMENT COMPANY, L.L.C.; ELGIN DEVELOPMENT COMPANY, L.L.C.; TDC COMPANY, L.L.C.; and, TIANA P. DOUGLAS

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE TENTH CIRCUIT COURT OF APPEALS

PETITIONERS' COMBINED REPLY TO ALL RESPONDENTS' BRIEFS IN OPPOSITION

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Dated: February 6, 2006.

TABLE OF CONTENTS

I. INTRODUCTION. 1

II. TAL BECAME A PUBLIC ADVOCATE AFTER DISCOVERING CORRUPTION. 1

A. There Was No Impropriety in Moshe Tal's Efforts to Combat Corruption 1

B. Douglas'sAdditional Attempts to Discredit the Tals. 3

III. THIS COURT MAY REVIEW THE DISTRICT COURT'S DISMISSAL OF MOSHE TAL'S CLAIMS ON THE GROUNDS OF RES JUDICATA. 6

IV. THE HOGANS' AND DOUGLAS'S MISSTATEMENT OF FACTS REGARDING THE SCOPE OF AND ISSUES DECIDED IN THE OKLAHOMA STATE COURTS. 7

A. The Issues Raised and Decided in the Prior Qui Tam Related Suits 8

i. Scope of Issues Decided in *Tal I.* 8

ii. Pending State Litigation. 9

V. CONCLUSION 10

TABLE OF AUTHORITIES

FEDERAL CASES

Pelfresne v. Stephens 35 F.Supp.2d 1064 (E.D. Ill. 1999) 1

New York City Transit Authority et al. v. Beazer et al., 440 U.S. 568, 99 S. Ct. 1355, 1364, 59 L. Ed. 2d 587 (1979) 6

STATE CASES

Burkett v. Tal, et al., 94 P.3d 114 (Okla. 2004) 5

City of Oklahoma City, v. Tal, et al., 110 P.3d 550 (Okla. 2005) 2, 5

State, ex rel Tal v. City of Oklahoma City, 19 P. 3d 268 (Okla. 2000) 4

State, ex rel. Tal v. Norick, et al, 991 P.2d 999 (Okla. 1999) 4

The State of Oklahoma, ex rel. Tal v. The City of Oklahoma City, et al., 61 P.3d 234 (Okla. 2002) 3-5, 9

City of Oklahoma City v. Urban Renewal Authority, et al., 988 P.2d 901 (Okla. 1999) 8, 9

TALS' COMBINED REPLY TO BRIEFS IN OPPOSITION

I. INTRODUCTION.

Petitioners, Bricktown 2000, Inc. ("BT-2000""); Tal Technologies Inc. ("TTI"); and, Moshe Tal ("Tal") (collectively the "Tals"), respectfully submit this Combined Reply to Respondents the Hogans' and Douglas's (the "Respondents") Briefs in Opposition to Tals' *Petition for A Writ of Certiorari* ("Opposition Brief(s)" or "Opposition(s)").

The Tals' exposition of law and fact in their Petition for A Writ of Certiorari adequately addresses the legal and factual issues raised in the Respondents' Briefs in Opposition. Thus, the main purpose of this Reply is to address the Respondents' inaccurate representations and omission of critical facts, prior court rulings, and relevant authorities/rulings in an attempt to support their positions.[1]

II. TAL BECAME A PUBLIC ADVOCATE AFTER DISCOVERING CORRUPTION.

A. Moshe Tal's Efforts to Combat Corruption.

Both the Hogans and Douglas use their Briefs in Opposition as forums for personal attacks on Moshe Tal attempting to "paint" him as a "disgruntled" person a "sour-grapes" loser and a "serial litigator". They claim Moshe Tal decided - after losing his bid for the Urban Renewal's Redevelopment contracts, and/or losing his attempt to stop the City's condemnation of his (TTI's) property - to file numerous *Qui Tam* suits for the improper purpose of retaliation and stopping and/or delaying the Redevelopment of the City's MAPS Bricktown projects. They contend that Moshe Tal's unrelenting efforts to vindicate the wrongs committed by the Hogans and Douglas against the taxpayers

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[1]The Tals would also like correct an error they made in citing *Pelfresne v. Stephens*. In their Petition for a Writ of Certiorari, p. 17, fnt 16, the Tals cited that case as 35 F.Supp.2d 1964 (E.D. Ill. 1999), instead of 35 F.Supp.2d 1064. Further, in respond to the Hogans' motion to dismiss for failure to properly format, the Tals would state that in compliance with USSC Rule 33(1)(b) the Petition is written in 11 point Times New Roman with 9 point footnotes.

of Oklahoma City, as well as Moshe Tal individually and his corporations, makes him a "serial litigator" who continually pursues unfounded claims in a effort to seek revenge. These *ad hominem* attacks are improper and have no place in this proceeding.

Rather, the facts show that Moshe Tal, like most *Qui Tam* relators, brought these actions after he uncovered massive amounts of governmental corruption and fraud against the taxpayers. After Tal submitted (on behalf of BT-2000 and it's CCBT Joint Venture) his Redevelopment RFP proposal, he discovered a high degree of corruption among the Hogan Group and numerous public officials, including, but not limited to, a conspiracy to rig the RFP process. The corruption was especially evident in that numerous public officials had personal and/or financial interests in these Redevelopment and Parking contracts (as detailed in the Second Amended Petition, the RICO Case Statement, and the Petition for Writ of Certiorari).[2] These officials' holding of such interests is strictly prohibited by Oklahoma law.

After Tal discovered the corruption and conflict of interests in the RFP process, which resulted in the personal damages to himself and his corporate entities, Tal then discovered that the Hogan Group, together with numerous public officials, was also engaged in an unlawful misappropriation of million of dollars of Tax Funds. With this discovery, Tal formed a Citizens/Taxpayers Group,[3] and filed *Qui Tam* Written Demands for each purported public project where Tax Funds were unlawfully expended. THG is still an active Taxpayers "Watch-Dog" entity and has other *Qui Tam* suits pending[4]

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[2] At least 3 out of the 5 Urban Renewal Commissioners has business relationship with the Hogan Group, and 2 of these Commissioners are actual partners in the subject Redevelopment and Parking contracts.

[3] Initially called *Taxpayers Against Ripoffs* ("T.A.R.") and subsequently incorporated as non-profit corporation under the name *Taxpayers for Honest Government, Inc.* ("THG").

[4] The Bass Pro related *Qui Tam* suit is pending litigation in the Oklahoma County State Court - *Urban Renewal v. City of OKC v. Tal & THG, et al.*, CJ-03-2826, after being remanded by the Oklahoma Supreme Court, *Oklahoma City Urban Renewal Authority v. the City of Oklahoma City, et al.*, 110 P.3d 550, 559 (Okla. 2005).

This is not the first time that the Hogans and Douglas engaged in such personal attacks on Tal. In the prior *Qui Tam* suits, the Hogans and Douglas, along with the *Amicus* here (the City of Oklahoma City ["City"] and Oklahoma City Urban Renewal Authority ["URA" or "Urban Renewal"]), claimed that Tal initiated the *Qui Tam* suit for an improper purpose and as "retaliation" for losing his personal interest in the Bricktown Redevelopment (RFP) contracts. However, the Oklahoma Supreme Court rejected the Hogans' and Douglas's contentions and held that the attacks on Moshe Tal's motives were unfounded. In *Tal IV* (*The State of Oklahoma, ex rel. Tal v. The City of Oklahoma City, et al.*, 61 P.3d 234 (Okla. 2002)), the Oklahoma Supreme Court held:

> [I]t would also be inappropriate to conclude T.A.R. filed suit merely for the improper purpose of delaying the development of certain Bricktown projects because Mr. Tal was an unsuccessful bidder on some Bricktown projects. It is simply not unusual for an unsuccessful bidder on a public project to bring a qui tam-like proceeding questioning the legality or validity of a contract or transaction that has actually been awarded. [citation omitted]. . . . Yes, the transaction(s) or contract(s) attacked as unlawful were sought to be constrained by the plaintiffs, but that is no different than in the vast majority, if not all, *qui tam* suits. Further, that monetary gain was part of the motivation for the *qui tam* suit is also not a valid indicator of some improper purpose. Section 373 itself provides for a reward to the taxpayer that vindicates the public fisc through the means of a *qui tam* lawsuit. (Emphasis added). *Id., Tal IV*, at P31, 61 P.3d at 248-249.

B. Douglas'sAdditional Attempts to Discredit the Tals.

Douglas continues to try and discredit Moshe Tal and characterize the litigation brought by the Tals as frivolous by relying on dissenting opinions, taking statements out of context and omitting additional facts and rulings by the Oklahoma courts. She begins by misstating the record and attributing a remark by the dissent as the opinion of the

majority of the Oklahoma Supreme Court.

> Undaunted, Tal filed yet another *qui tam* suit on March 15, 2000, against Oklahoma city, OCURA, and a plethora of individual and companies. [footnote omitted] (Pet. App., at A7). The matter was once more dismissed by the trial court. On appeal, the Oklahoma Supreme Court recognized the blatant abuse of process engaged in by Tal..." (Emphasis added). *Id.*, Douglas Response, at p. 4.

First, the statement that ... "Tal filed **yet another** *qui tam* suit in March 15, 2000..." is untrue. The March 15, 2002 suit was the first Qui Tam suit filed by Tal.[5] The earlier *Qui Tam* suit, (*Tal I*), was the friendly Declaratory Judgment suit filed by the City against URA. Second, the statement that: "the Oklahoma Supreme Court recognized the blatant abuse of process engaged in by Tal..." is false. Such "finding" was not that of the Oklahoma Supreme Court's majority, but rather, the personal opinion of the dissenting justice.

Douglas continues her unfounded suppositions, stating: "[k]nowing he would face harsh sanctions with continued litigation in state court, Tal turned his efforts to the United States District Court." Douglas Opposition, at p. 5, fn 10. She then erroneously concludes:

> Tal was actually sanctioned, harshly, by the Oklahoma County District Court in direct response to the bad faith misconduct exhibited in his unending legal filings. Although the Supreme Court of Oklahoma reversed the lower court's attorney fee's award, the proverbial handwriting was on the wall - any further state court litigation would likely be met with punitive measures. *See, State ex rel. Tal v. City of Oklahoma City*, 61 P.3d 234 (Okla. 2002). Douglas Opposition, p. 5 footnote 10.

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[5] *State, ex rel Tal v. City of Oklahoma City*, 19 P. 3d 268 (Okla. 2000) was referred to by the Oklahoma Supreme court as *Tal III*. *Tal II*, was a another, unrelated *qui tam State, ex rel. Tal v. Norick, et al*, 991 P.2d 999 (Okla. 1999),relating to the unlawful expenditure of tax funds for the construction of a Ballpark. That suit was dismissed as being premature.

Such statements are false, or at best, very misleading. Seven of nine Oklahoma Supreme Court justices held that there was no bad-faith conduct on Tal's part and the trial court abused its discretion in sanctioning Tal and TAR. The language of their opinion certainly did not presage "punitive measures"— there was no proverbial handwriting on the wall. Rather, in *Tal IV* when the Oklahoma Supreme Court held the trial court abused its discretion in granting sanctions against the *Tals* it stated:

> A review of the record in these appeals leads us to conclude the plaintiffs were not sanctioned for any actual litigation misconduct or culpable conduct of their own, such as providing their attorney with incorrect facts, or some similar conduct that would involve the clients' own bad faith litigation misconduct. . . . The conduct sanctioned, as we see it, was for having the lawsuit filed and for mounting a response to the motions to dismiss. *Tal IV*, 61 P.3d 234, 248-249 (Okla. 2002).

Clearly, there was no ... "proverbial handwriting on the wall"that "any further state court litigation would likely be met with punitive measures." In fact, despite the filing of two subsequent actions in 2003, neither the Tals nor THG have been sanctioned. Although the trial court granted partial summary judgment(s) to the City and URA in one action, the Oklahoma Supreme Court reversed in favor of Tal and THG and remanded the case back to the trial court - to allow THG and Tal to litigate their *Qui Tam* claims. *See, Tal V, Oklahoma City Urban Renewal Authority v. the City of Oklahoma City, v. Tal, et al.*, 110 P.3d 550, 559 (Okla. 2005).[6]

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[6] If anything, after the reversal of the sanctions against Tal/Taxpayers (*Tal IV*), the City and all Respondents knew they would be unable to intimidate Tal or THG members with sanctions. However, they did not stop their attempt to scare the Taxpayers, and after Tal/THG filed their 2003 Written Demand, the City's Municipal Counselor, William Burkett ("Burkett"), filed a libel suit against Tal and THG members, claiming the allegations in the Written Demand were false and libelous. The trial court granted summary judgment against Burkett (dismissing his libel suit), the Court of Appeals affirmed, and the Oklahoma Supreme Court not only denied Burkett's Petition for Writ of Certiorari, but issued an Order releasing the Court of Appeals Opinion for publication, and further ordered that Opinion to be given precedential effect. *See, Burkett v. Tal,*

III. THIS COURT MAY REVIEW THE DISTRICT COURT'S DISMISSAL OF MOSHE TAL'S CLAIMS ON THE GROUNDS OF *RES JUDICATA*.

In the Tals' Petition for Certiorari, Moshe Tal seeks review of the district court's dismissal of his individual claims on the grounds of *res judicata*, claim and issue preclusion. The district court dismissed Moshe Tal's individual claims on the grounds that those claims were barred by *res judicata* based on Moshe Tal's status as the relator in various *Qui Tam* actions brought in the Oklahoma State Courts. The district court stated that Moshe Tal should have joined his personal claims in the *Qui Tam* suits. Moshe Tal appealed this issue to the Tenth Circuit including it both in the Notice of Appeal in his briefs on appeal. However, the Tenth Circuit neglected to address the issue in its decision to uphold the district court's dismissal of all claims raised by the Tals.

Noting that the Tenth Circuit failed to address the issue of *res judicata*, Moshe Tal nevertheless raised and briefed the issue of *res judicata* in his Petition for a Writ of Certiorari. In their Briefs in Opposition, both the Hogans and Douglas claim that because the Tenth Circuit did not address the issue, it cannot be raised on certiorari. This contention is incorrect.

The failure of a court of appeals to address an issue decided by the district court does not prevent this Court from reaching the issue. *New York City Transit Authority et al. v. Beazer et al.*, 440 U.S. 568; 99 S. Ct. 1355, 1364; 59 L. Ed. 2d 587 (1979). This Court may appropriately reach an issue in a case when it has been fully aired before the district court, it involves application of settled legal principles to uncontroversial facts, it has been carefully briefed and neither party has asked for remand to have the court of appeals decide the issue. *Id.*

Under this Court's ruling in *New York City Transit Authority et al. v. Beazer et al,* the circumstances of the present case permit review of the district court's ruling on *res judicata* despite the Tenth Circuit's

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et al., 94 P.3d 114 (Okla. 2004).

failure to rule on the issue. The issue of *res judicata* was fully heard by the district court and ruled on by that court. This is even admitted by the Hogans in fn 13, p. 20, wherein they *"acknowledge that the district court judge's oral pronouncement of his anticipated ruling mentioned res judicata as a possible basis for the dismissal of Petitioner Tal's claims."* Further, *res judicata* is a settled principle of law and it is to be applied to the undisputed fact that Moshe Tal did not join his personal claims in the *Qui Tam* suits in which he was the relator. Moreover, issue of *res judicata* has been carefully briefed by the Tals in the Petition for Certiorari and by all parties in the action below. Finally, none of the parties have asked for remand to the Tenth Circuit for a decision on the issue.

The issue of *res judicata* has been properly raised in the Tals' Petition for Certiorari and may be heard by this Honorable Court.

IV. THE HOGANS' AND DOUGLAS'S MISSTATEMENT OF FACTS REGARDING THE SCOPE OF AND ISSUES DECIDED IN THE OKLAHOMA STATE COURTS.

Although they claim *res judicata* cannot be raised in the Petition for Certiorari, the Hogans and Douglas dedicate several pages of their Opposition Briefs to discussions of prior state court litigation that the Federal District Court found to be *res judicata* as to Moshe Tal's personal claims. The Hogans and Douglas contend that based upon this state litigation, the redevelopment contracts and fraudulent condemnation issues in this federal suit, were 1) "previously adjudicated" and 2) declared "legal" in 3) "related" *Qui Tam* suits, 4) "initiated" by Moshe Tal. While they do not rely on *res judicata* as a bar, their only purpose in making these assertions, is to show that the claims have already been litigation and are barred by issue and claim preclusion. Their alternative purpose is also to show that for purposes of the *Rooker-Feldman* Doctrine, these issues have been decided by a state court and are thereby barred from relitigation in federal court.[7]

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[7]Application of the *Rooker-Feldman* Doctrine was fully briefed in the Tals' Petition for Certiorari and will not be reargued here. However, the discussion of the actual facts and issues in this Reply Brief apply to the *Rooker-Feldman* issue, insofar as the facts clarified herein show that the issues decided in the prior state court litigation do not preclude the Tals' federal court litigation of

As discussed fully in the Petition for Certiorari, based upon the actual parties joined and facts and issues raised in the prior litigation, and the existence of parallel state court proceedings, neither *res judicata* nor the *Rooker-Feldman* doctrine bar any part of the present litigation from proceeding in federal district court

A. The Issues Raised and Decided in the Prior *Qui Tam* Related Suits.

The Respondents fail to truthfully represent the issues litigated in the prior *Qui Tam* suits and fail to mention critical rulings by the Oklahoma Supreme Court in these prior *Qui Tam* suits.

i. Scope of Issues Decided in *Tal I*.

The Hogans and Douglas attempt to use *Tal I* to show that the issues raised in this federal action were raised and litigated in *Tal I*. They also use it to assert that the Oklahoma Court declared their conduct legal. This is patently untrue. The only issue on appeal was the denial of Tal/T.A.R.'s motion to intervene. The Oklahoma Supreme Court did not hold that the redevelopment contracts were "valid, legal and constitutional. Nor did the court review the legality of the condemnation as asserted by Douglas. Douglas' Opposition, pp. 3-4.

The first *Qui Tam* related suit, designated as *"Tal I"*, was not even filed by Tal, but rather it was a friendly suit (Declaratory Judgment) filed by the City of against URA and the Hogans. *City of Oklahoma City v. Urban Renewal Authority, et al.*, 988 P.2d 901 (Okla. 1999). When the City failed to raise most of the issues in the Written Demand, T.A.R./Tal attempted to intervene in that action to adjudicate those issues. T.A.R/ Tal's motion to intervene was denied and they appealed. That intervention was the only issue on appeal is made clear by the Oklahoma Supreme Court's decision in *Tal IV*:.

> [I]n *Tal I* it was expressly stated that only the narrow issue of whether the trial court erred in denying taxpayers' motion to

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the issues raised in this action.

> intervene (and a related motion for a continuance) was before this Court. *Tal I, 1999 OK 71, at P14, 988 P.2d at 905. Tal I* also, in effect, ruled that because taxpayers were properly denied intervention they were excluded as party litigants and had no standing to tender for our review in that appeal any errors that may have been made in the judgment upholding the Agreements as lawful. *Tal I, 1999 OK 71, at P23, 988 P.2d at 906.* Thus, although *Tal I* discussed the Agreements, it did not affirm the trial court judgment declaring their lawfulness [*Tal I,* 1999 OK 71, at P0 and P31, 988 P.2d at 902 and 908]. *Tal IV*, 61 P.3d at 241.

Douglas' and the Hogans' declarations that in *Tal I* the Oklahoma Supreme Court ruled on the issues asserted in this federal litigation are not supported by the facts and must be disregarded.

ii. Pending State Litigation.

The Hogans and Douglas also claim that for purposes of the *Rooker-Feldman* Doctrine, there is no parallel state litigation on the issues of fraudulent condemnation or intentional interference with business. Their claim is without support in fact.

As shown in Tals' 12/14/06 Petition for Certiorari, the condemnation proceedings in the Oklahoma state court are still pending in two separate actions. *See* fn 10 to Tals' Petition; *City of Oklahoma City v. Tal Technologies Inc.*, CJ-97-2034 (the initial condemnation suit); and *Tal, et al., v. Hogan, et al.*, CJ-04-7943 (asserting, *inter alia* claims for fraudulent condemnation and intentional interference with business) (collectively "pending/parallel litigation").

The initial condemnation suit has been pending since 1997. The second condemnation action was filed in 2004.("2004 Condemnation"). In the 2004 Condemnation, the Hogans and Douglas moved to dismiss the suit on the grounds of *res judicata.* They claim that the fraudulent condemnation issue and the tortious interference with business were already litigated in this federal suit (despite the fact that the federal court dismissed these state claims without prejudice). In that same action, Tal moved to disqualify the trial judge

based on collusion between the judge and the Hogans and Douglas, and a showing of bias and prejudice. Before the disqualification issue was fully litigated, the trial court granted the Hogans' and Douglas's motions to dismiss, holding that the federal district court's dismissal of those claims was *res judicata*.

In an action for extraordinary writ, the Oklahoma Supreme Court granted Tal's Petition for A Writ of Mandamus and Prohibition, and reversed the trial court's dismissal of the 2004 Condemnation. *See* Oklahoma Supreme Court's 11/27/06 Order, www.oscn.net, Appeal No. 103853. Thereafter, the trial judge recused herself from the case. Thus, Tal's claims for fraudulent condemnation and tortious interference are pending while awaiting reassignment.

Therefore, for purposes of application of the Rooker-Feldman Doctrine, there is, in fact, parallel state litigation where the questions of fraudulent condemnation and intentional interference with business remain pending.

V. CONCLUSION

For the reasons stated in Tal's Petition for A Writ of Certiorari and herein, Tal's Petition should be granted.

Respectfully submitted,

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